S. Hrg. 98-292

# NOMINATIONS OF LEE M. THOMAS, ALVIN L. ALM, HOWARD M. MESSNER, AND FREDERICK M. BERNTHAL

## HEARINGS

BEFORE THE

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON THE NOMINATIONS

OF

LEE M. THOMAS TO BE ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

ALVIN L. ALM TO BE DEPUTY ASSISTANT ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

HOWARD M. MESSNER TO BE ASSISTANT ADMINISTRATOR FOR ADMINISTRATION, ENVIRONMENTAL PROTECTION AGENCY

AND

FREDERICK M. BERNTHAL TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION

JUNE 23 AND AUGUST 1, 1983

Printed for the use of the Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE

22-034 O WASHINGTON: 1983

S321-34.

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# NOMINATIONS

## LEE M. THOMAS

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THURSDAY, JUNE 23, 1983

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
*Washington, D.C.*

The committee met at 2:30 p.m., in room SD–406, Dirksen Senate Office Building, Hon. Robert T. Stafford (chairman of the committee) presiding.

Present: Senators Stafford, Chafee, Durenberger, Humphrey, Randolph, Bentsen, Moynihan, and Mitchell.

Also present: Senator Thurmond.

Senator STAFFORD. The Chair is very grateful to everybody who is here today for the nomination hearing of Lee M. Thomas to be the Assistant Administrator for Solid Waste and Emergency Response.

The Chair notes that we are honored to have here our very able colleague from South Carolina, the distinguished Senator Strom Thurmond. Welcome, Senator. We are very happy to have you come by and introduce Mr. Thomas to us.

### STATEMENT OF HON. STROM THURMOND, U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Thank you very much, Mr. Chairman, and gentlemen of the committee. It is a pleasure to appear before you and the other distinguished members of the Senate Environment and Public Works Committee today to introduce and support Mr. Lee M. Thomas, originally of Ridgeway, S.C., who has been nominated by the President to serve as Assistant Administrator of the Environmental Protection Agency for Solid Waste and Emergency Response.

This is not the first time I have been afforded this privilege as I had the honor of introducing Mr. Thomas to this committee when the President asked him to leave South Carolina and become the Associate Director for State and Local Programs and Support at the Federal Emergency Management Agency. Mr. Thomas has had a distinguished career as an administrator and has demonstrated himself to be a remarkably capable and dedicated public servant.

Before coming to Washington, Mr. Thomas was director of the division of public safety programs in the Office of the Governor. Mr. Thomas also served as chairman of the Governor's task force on emergency response capabilities in support of fixed nuclear facilities. Earlier, Mr. Thomas was an independent consultant in criminal justice planning and management; executive director, office of crimi-

nal justice programs in the office of the Governor, South Carolina; director of the comprehensive offender rehabilitation program for South Carolina; and chairman of the National Criminal Justice Association.

Since coming to Washington, Mr. Thomas has continued to distinguish himself through a series of important and difficult assignments. In his first appointment as Associate Director of the Federal Emergency Management Agency, he managed all relief efforts of that agency. Mr. Thomas was then appointed Executive Deputy Director of that agency and served as Chairman of the President's Task Force on Times Beach, Mo., where he managed efforts to relocate residents of the dioxin contaminated area. Earlier this year, the President designated Mr. Thomas as Acting Assistant Administrator of the Environmental Protection Agency for Solid Waste and Emergency Response and later as Acting Deputy Administrator of the Environmental Protection Agency.

Like William Ruckelshaus, Administrator of the Environmental Protection Agency, whose confirmation I enthusiastically supported, I believe Mr. Thomas is facing a difficult task. No other office within the EPA has been the target of certain intense criticism. No other office within the EPA has a more important charter, management of the toxic waste cleanup fund, or Superfund as it is commonly called, and management of the hazardous waste program. As we have clearly seen in recent times, the health and safety of the people can be directly jeopardized by inadequate disposal practices or illegal dumping of toxic wastes.

Just such a concern prompted me to meet with Mr. Ruckelshaus last week. In our meeting, I asked that the EPA conduct a comprehensive review of Federal standards for land disposal of hazardous wastes and implement strict new regulations to insure that the Nation's ground supplies are not contaminated. I am pleased to report that Mr. Ruckelshaus pledged his full cooperation.

Mr. Chairman, gentlemen of the committee, it is vitally important that we provide for the adequate cleanup of toxic wastes which threaten our environment. Similarly, we must insure that laws are in place to provide the EPA with the necessary powers to protect us from further threats. If these steps are taken, then I am confident that capable administrators, such as Mr. Ruckelshaus and Mr. Thomas, will act forcefully but prudently to protect our environment.

In closing, Mr. Chairman, I believe it is clear that Mr. Thomas is an excellent choice for this important post. He has built an impressive reputation with a number of State and Federal agencies as an accomplished administrator and protector of our environment. I am certain Mr. Thomas will help restore credibility to the EPA and will continue his outstanding service to the Nation. It is therefore a great pleasure for me to endorse Mr. Thomas for the position of Assistant Administrator of the Environmental Protection Agency.

I wish to thank you very much.

Senator STAFFORD. Thank you very much, Senator.

We know how busy you are and the committee will understand if your duties carry you elsewhere.

Senator THURMOND. Thank you, sir. We are having a markup in Armed Services. If you will excuse me now, I will run along.

## OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. I want to welcome those who are here to this committee's hearing on the nomination of Lee Thomas to serve as Assistant Administrator of the EPA for Solid Waste and Emergency Response.

Mr. Thomas, you have already spent your entire day here. So the nomination may seem to you to be something of a formality. But it is much more than that. The fact that you spent the morning with us is a testament of the fine relationship you have already established with this committee and its staff. I am sure you will continue to build that relationship and I want the committee staff to participate with you in it.

So in that sense, the nomination is in fact a formality. But a nomination hearing serves a purpose for the Senate as well as for the nominee. It provides us the opportunity to express our advice at a time when, to be quite frank, the nominee has no choice but to heed it or at least listen to it. Having said that, allow me to express some of my views briefly on your responsibilities.

As to the Superfund law, I would like to make the following suggestions. First, the law contains a liability standard which is strict. That was incorporated into the law, in part, to make it easy for the fund to recapture its money, but most importantly to provide those who traffic in toxic chemicals with an incentive to handle them carefully. Neither of those purposes is served in my judgment, if suits are not brought, or if they are based on needlessly complex factual situations. It is my observation that there have been virtually no lawsuits filed in some cases which are so clear on the facts that they would be literally open and shut.

Suits all too often instead are being filed in cases of abandoned dump sites involving literally hundreds of defendants. In cases such as an overturned tank car or a ruptured lagoon, liability can be fixed easily and quickly. I suggest that you see to it that these cases are filed immediately and prosecuted vigorously. One specific example is the Ralston-Purina release into the Louisville sewer system which we believe did more than $16 million worth of damages.

I have been asking about that incident for 2½ years and have yet to receive a satisfactory explanation of why no suit has been filed.

My second observation is that the superfund law deals with toxic chemicals, not hazardous wastes. That is intentional. You can respond to pesticide applications, Clear Water Act discharges, train derailments, and many other instances in addition to hazardous waste sites.

All indications are that the hazardous waste site program has preoccupied the agency to the exclusion of these others and, in the view of this Senator, equally important problems.

Third, there is no evidence that the State and local governments are being systematically advised of the law provisions and their role in its implementation. The law specifically authorizes persons other than the Federal Government to respond to releases and collect their costs. State and local officials are not being told this nor are they being trained in the use of the law including its liability provisions.

Fourth, the implementation of the law's health-related authorities is not only moving at a slow pace, but it is being actively resisted. This resistance is principally at the Office of Management and Budget and at the Department of Health and Human Services. But you can play a major role in assuring your colleagues at OMB and HHS that they have specific duties and specific obligations under the law and that you are relying upon them to do their job.

There should be no room for an organization like the American Medical Association to be able to say that you are embarked on a witch hunt on dioxins. It is you job and especially that of the officials at HHS to assure that either are in the position to accurately and completely refute such accusations or never make the mistakes in the first place.

I have other comments I could make but I will stop now because these are the ones that I consider to be most important. May I, in closing, say that, generally speaking, I think you are doing a good job and that this Senator believes you should be confirmed.

Senator Randolph?

## OPENING STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Thank you very much, Mr. Chairman.

We are, of course, considering the nomination of Lee Thomas to be Assistant Administrator of the Environmental Protection Agency for Solid Waste and Emergency Response. I have often wondered a little about the wording of Emergency Response. I am not going into it at the present time. But I am not certain that is the best verbiage. We have seen and we have heard Mr. Thomas on recent occasions and even this morning he counseled with us on amendments to the Solid Waste Act.

He has been on the job in many capacities and for some time he has been the Acting Assistant Administrator. As I look at his record, it is a positive one with a reputation which merits him for this particular job. I think this is a very, very important position. Sometimes we use the word "important" too often. But I think it is a critical period in which Mr. Thomas will come to the leadership role that he will join with others in EPA.

He will have to administer both the Solid Waste Act and the Superfund.

So this hearing provides us with a further opportunity to counsel with Mr. Thomas and I hope that the nomination itself can be moved forward without delay.

Mr. Chairman, I have a letter from our colleague, Senator Gary Hart, addressed to Mr. Thomas. I would request that that letter which I will give to you, be answered prior to the actual vote on your nomination here in the Senate. I am sure that could be accommodated. I see no reason why it could not be.

Do you have knowledge of this letter?

Mr. THOMAS. No, sir.

Senator RANDOLPH. I am informed that even though the hearing will conclude today, it will probably be next Wednesday before the actual action of the committee will take place. So I do believe that you will have the opportunity to comply with Senator Hart's request.

The matter we discussed earlier today in reference to the so-called waste from certain types of oil; I want to say that I was convinced that there were no safety and health problems involved. That is why I wondered why the exemption was written. I would like to ask you to check into this matter. If you and others are able to show that in fact it has not been proven that safety and health is not involved, I certainly would want to come back to this subject again. You understand?

Mr. THOMAS. Certainly.

Senator RANDOLPH. I appreciate the opportunity to be here.

Our schedules are not always effectively arranged. I have some constituents who have come to see me, without an appointment.

Whether appointments have been made or not, I will find the time to meet with them. A group from Kaiser, W. Va., is here to discuss problem of mental health. I don't know whether they are checking in on the Senate or the House.

Or the Congress as a whole. I don't know. But I know that these are matters of importance to them. I shall be talking with them.

I want to say that I am impressed with your record. I have done more than just take a cursory look at it. I wish you well. I hope that the committee, Mr. Chairman, can finalize Mr. Thomas' nomination for this highly critical job at this very important time.

Senator STAFFORD. Thank you very much.

Senator Humphrey, do you have an opening statement?

Senator HUMPHREY. No. I haven't. As a matter of fact, Mr. Chairman, I have to go to a committee hearing. Just very briefly, I would like to welcome Mr. Thomas. I may have some questions that I would submit to Mr. Thomas.

Senator STAFFORD. We would ask Mr. Thomas to respond to them in writing as soon as possible.

Senator Moynihan?

## OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Thank you, Mr. Chairman.

I think we might let Mr. Thomas get back to the job he has been doing for 3 months. If the chairman would be patient with me for just a bit, I would like to go over with Mr. Thomas, basically, the subject we discussed yesterday and, for the record, put some questions to you and for the record, get back the answers which you gave which were altogether reassuring to me.

It has to do with the Love Canal which is where the Superfund begins, which is where the Nation's awareness of the problems of toxic wastes begins. As I said to you yesterday, that it has been remarked by a member of our staff, Debbie Knopman, that waterborne toxic wastes might be a public health problem in years ahead comparable to what waterborne bacterial diseases were in, say, the 19th century. As you know, in June 1980, the EPA undertook to do a study of the situation at Love Canal. It was almost their first because it was, as I say, the beginning of the matter.

The study cost $5.4 million. It was ready in May of last year and not released until July 19. It was something that made us all uneasy, and I remember an early reaction, it was messy and unconvincing. Senator D'Amato and I, and Representative LaFalce, whose district

this is, asked the Office of Technology Assessment if they would not make an assessment of the study. We got that this week, as you know.

The basic finding of the OTA report was that the present plan for cleanup of the area isn't good enough. There are known dioxin contaminations in the storm sewers and creeks at Love Canal that have yet to be cleaned up. There are any number of technical problems with this question and you agreed with me that it is a basic, strategic question for you, across the Nation, that when you have a site of this kind, do you try to contain it, seal it as it were and leave it where it is, or do you try to remove it from the place it is in?

Obviously, the question of habitation, soil conditions, and so forth, will determine. But the fact is that the OTA feels that the present containment is not working and they think that more monitoring needs to be done house-by-house, possibly. They think more permanent solutions are required and this is now your job to develop. I wonder if you could tell me what your thinking is at this moment, what your plans are?

Mr. THOMAS. Certainly.

As we discussed, after receiving that OTA report yesterday, actually it was even before, I believe, I had asked for my staff along with the staff of the New York Regional Office and our Research and Development Division in the EPA, to begin quickly a review of the issues that were raised in that OTA report and come in with a complete review of those issues that have been raised and provide options if options are required to the current process that we have underway at Love Canal.

I have also communicated with the Public Health Service and requested that the Center for Disease Control be actively involved with us in the review of those issues and Dr. Grant, who is the Assistant Secretary for Health at HHS, committed to me that they absolutely would and we have begun that coordination process.

Senator MOYNIHAN. Would you thank Dr. Grant for this committee. I am sure the chairman would agree that there are some things only the CDC can tell you, as it were, and their cooperation is absolutely essential.

Mr. THOMAS. So they will be very much involved with us in that review. I hope to have that review completed just as quickly as possible so we can determine whether any other action is necessary other than the action that is currently underway.

Senator MOYNIHAN. Would you be willing—and I don't press you—but would you be willing to give us a time estimate that you hope you would like to meet, not a deadline, but there is obviously a lot of pressure at this point.

Mr. THOMAS. There is. I wish I could give you that time deadline. I can't. I would be able to do that shortly because I asked the group as a first step to give me their time frame. I gave them guidance that I would like it done very quickly.

Senator MOYNIHAN. Would you tell us when you have it set?

Mr. THOMAS. I will.

Senator MOYNIHAN. Could we agree that in about 3 weeks' time, Senator D'Amato and I and Mr. LaFalce, will meet with you to see where you are?

Mr. THOMAS. That would be fine with me.

Senator MOYNIHAN. In the appropriation bill that passed just yesterday, we added $100 million to the Superfund funds available for this year.

So you have $400-plus million and you have that much work to do. But at least it is not a problem of resources. It is a question of strategy and judgment.

One other thing, sir. We will meet in about 3 weeks' time?

Mr. THOMAS. Yes, sir.

Senator MOYNIHAN. Before then, you let me know what your deadline is.

Just one other thing. Yesterday, I mentioned to you that Senator Hart and I had introduced legislation that suggested, just possibly, that you might transfer some of the tax basis from the producers of the chemicals to the actual producers of the wastes. That obviously has the advantage that you suggested. If you buy these chemicals, you pay for their disposition, howsoever difficult it might be, and there is no economic incentive to minimize it. It may be that putting that incentive in for new technology because it is a cost consideration might have an effect; it also may be that it is too complicated to administer.

This committee, under the chairman, is a very collegial committee and our relationship with EPA has always been a good one. What I hope is, after 6 months of this under your belt, that you can come and tell us what you think.

Mr. THOMAS. I would be pleased to do that. I look forward to doing that.

Senator MOYNIHAN. It is something worth considering. The whole subject of getting incentives into this system is a vital subject. We would very much value your judgment.

Mr. Chairman, may I say our conversations have been precise and positive and I think we have a winner with Mr. Thomas. We are all very pleased that he is with us. I look forward to voting for his confirmation which I would hazard to estimate will be unanimous.

Senator STAFFORD. Thank you very much, Senator Moynihan. I think your prediction will stand up.

I should just recall for the record that in the last Congress, we did take a hard look at collecting the Superfund fees from those who are generating wastes rather than from the feedstock sources. I think what probably turned us away from that and to the feedstock sources was that we had some 240,000 generators to collect from.

Senator MOYNIHAN. And about 200 producers.

Senator STAFFORD. But I think it is something we should take another look at now because if there were some way to do it, we would be able to emphasize to those, the creators of the hazardous substances, the cost of doing so which they may now somewhat overlook since the feedstock producers are the ones.

In any event, it is something that we should look at.

At this point, I should announce that the Chair, without objection, is going to reserve the right to all members to submit questions in writing for your early response, if you can, Mr. Thomas, so that we can go ahead and vote on your nomination as quickly as possible.

Second, I would announce that the subcommittee meeting of the Environmental Pollution Subcommittee scheduled for tomorrow on

RCRA will be postponed until next Thursday in order to give three members who are going to be necessarily absent tomorrow an opportunity to be present, and to give further opportunity to work out things at the staff level until then.

Finally, that the markup in full committee on clean water will occur on Wednesday next. It is the chairman's hope that 1 long day will be enough to get that out of the committee.

Having said that, Mr. Thomas, we would be glad to hear from you.

**STATEMENT OF LEE M. THOMAS, TO BE ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY**

Mr. THOMAS. Thank you, Senator.

I appreciate your comments and those of your distinguished colleagues. I am honored to appear before you today as President Reagan's nominee to be the Assistant Administrator for Solid Waste and Emergency Response at the U.S. Environmental Protection Agency.

Congress—principally at the initiative of this committee—has provided the Agency with statutes that have a common goal of protecting health and the environment. Administration of two of the newest and most challenging of these laws is the operational responsibility of the Assistant Administrator for Solid Waste and Emergency Response. These laws, the Resource Conservation and Recovery Act [RCRA] and the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA] also known as Superfund, provide broad and flexible authority to control hazardous wastes and repair the damage done to the environment caused by improper handling of such wastes and hazardous substances in the past.

As you know, I was designated Acting Assistant Administrator on February 24. That appointment has allowed me to examine both of these complex statutes to understand their objectives and to determine how they could be implemented most effectively. It has also given me the opportunity to assess what I have concluded is one of EPA's greatest strengths—its capable, dedicated, and thoroughly professional career staff.

It is my firm belief that my mission at EPA is to insure that the Agency is aggressively responding to public health and environmental threats from hazardous substances by:

Moving vigorously and using all available tools to clean up abandoned hazardous waste sites created by careless or unmonitored practices of the past, and responding to releases of hazardous substances.

Preventing new Superfund sites from being created by implementing a comprehensive hazardous waste management control system.

Working closely with the career staff assigned implementation responsibility for RCRA and CERCLA, I have already begun to identify opportunities for improvement and have made some policy changes. The problems that RCRA and CERCLA were intended to address are pressing and were long neglected. Decisions we face daily in implementing these laws frequently require consideration of technical or scientific factors which approach the frontiers of knowledge. Because we are still in the relatively early phases of implementation

and learning a great deal, our very perception of the problems we are attempting to address is changing. Solutions will be modified as problems are redefined.

With all this in mind, the Agency must continue to develop momentum in addressing hazardous waste problems. I would like to briefly outline some of the initiatives I have taken to accelerate progress.

### SUPERFUND

I believe the Agency should make full use of all response authorities provided by CERCLA, and to apply them in a more integrated way. Shortly after my arrival at the Agency, I concluded that there were opportunities to make greater use of the removal authority than had been pursued in the past. To capitalize on these opportunities, I have delegated authority for certain removal actions to EPA's regions. I have also directed EPA's regional offices to conduct a systematic review and evaluation of all 419 sites on the proposed National Priorities List which are candidates for remedial actions. As an interesting side note, I will tell you the day before yesterday I got my first call from a reporter who was concerned that we had made our decision too quickly go to a site to clean it up and felt there must be some reason behind that. I tried to explain management improvement. They felt there must be more to it than that.

This review is intended to assess which of these sites may be made less hazardous through limited removal action while options for longer-range remedial measures are developed.

In addition, I have taken steps to streamline the process for taking remedial actions by delegating certain decisionmaking authority to Regional Administrators. The Agency is only a few weeks away from promulgating the National Priorities List, which will give us a revised agenda of remedial sites.

Vigorous enforcement actions, using the full range of statutory tools you have provided, will complement the response actions we will take. We will compel cleanup where possible and obtain cost recovery where fund response is indicated. Given the large number of sites that must be addressed over the next 3 years, it makes sense for the Superfund remedial and enforcement components to focus their efforts on different sites to the maximum extent feasible—and we are classifying sites to so concentrate our efforts.

### RESOURCE CONSERVATION AND RECOVERY ACT

Although it is clear that our Superfund responsibilities require a great deal of attention, our RCRA mandate is equally challenging. The statutory scheme requires that we move simultaneously on several fronts in order to create a complete fabric of regulatory protection from hazardous wastes. I have already testified before you at some length on areas where additional regulation is necessary and my intention that the Agency proceed as quickly as practicable to close gaps and refine controls previously adopted. The next 2 to 3 years will see a major commitment toward this end.

The law contemplates that States will exercise major responsibility for permitting and enforcement under programs authorized as equiva-

lent to the Federal RCRA program. We have devoted substantial effort toward assuring that sound programs are authorized so that the country benefits from the creative regulatory approaches suited to special State needs and State personnel resources.

However, our responsibilities will not end with encouraging States to become qualified and committed to authorization. We recognize that Congress will look to EPA to assure reasonable national uniformity of implementation, to exercise quality control and oversight, and to provide comprehensive national information on which to make independent evaluations about the success of the program.

While pursuing authorization, the Agency has adopted permitting standards for most categories of treatment, storage, and disposal facilities. As these standards have been promulgated, the Agency and States have initiated permitting actions to bring facilities under these stricter regulatory standards.

I intend to closely monitor and manage our adherence to schedule which my staff has developed to completing this permitting process.

In conclusion, the controversies of the past months have prompted numerous internal and external evaluations of the hazardous waste program. Not all of them have thrown bouquets. At times, the Agency has judged itself harshly. However, as Assistant Administrator—should I be confirmed—it will be my responsibility to continually evaluate how the program operates, and how it can be made more effective in attaining the statutory objectives. I intend to act swiftly and vigorously to make the necessary improvements identified by this continuing evaluation.

The Congress and the Agency together can restore confidence in the Environmental Protection Agency and its leadership. For my part, I will commit to you a genuine desire and heartfelt promise to conduct the affairs of the office to which I am nominated in an open and forthright manner. I will welcome your insights and intend to seek them out. I expect your questions and concerns.

As the elected representatives of the American people, I feel you have every right to demand frank and open responses to issues raised by a concerned public—a public whose health and environment are entrusted to environmental managers such as myself. I am looking forward to fulfilling the public trust and applying the hard lessons that have been learned.

Although I have not had the opportunity to meet informally with each of you since my nomination, I have not been a stranger to this committee, having testified twice in this hearing room for EPA in recent weeks and as lately as this morning and having been confirmed by you in 1981 for my previous position.

Nevertheless, I feel it would be appropriate here to submit for the record some of the elements of my prior experience and training.

In closing, I wish to restate my enthusiasm for tackling the many challenges of the position for which I am nominated. I regard public service as a singular honor. The opportunity to work in a capacity which protects the health and environment which sustains human life makes such service doubly rewarding.

I will be happy to respond to any questions which the members of the committee have.

[An attachment to Mr. Thomas' statement follows:]

ATTACHMENT -- SUMMARY OF PRIOR EXPERIENCE AND TRAINING

Prior to joining EPA I served as the Executive Deputy Director and the Associate Director for State and Local Programs and Support of the Federal Emergency Management Agency. As Executive Deputy Director, I formulated, developed and implemented all policy and management activities covering the full range of FEMA programs and functions. Major domestic program responsibilities included the Civil Defense Program; Disaster Relief Program; Floodplain Management Program; Earthquake Hazard Reduction Program; Radiological Emergency Preparedness Program; and the coordination of Federal response to all emergencies. Additionally, I served as the Executive Secretary of the Emergency Mobilization Preparedness Board, and Chairman of the U.S./Mexican Working Groups on Hydrological Phenomena and Geological Phenomena, and U.S. Representative to the NATO Committee on Civil Defense.

Prior to joining the Federal Emergency Management Agency, I served as Director of the Division of Public Safety Programs in the Office of the Governor of South Carolina. My responsibilities included coordination of all emergency management activities for the Governor, as well as liaison with public safety agencies at the State and local level. I was also responsible for the direction of the public safety planning and coordination functions in the State. The division included units for criminal

justice, highway safety, comprehensive emergency management, and public safety grants. I served as Chairman of the Governor's Fixed Nuclear Facilities Review Committee--directing an assessment of all State agencies and effecting local governments' capabilities to respond to an emergency at fixed nuclear facilities and other nuclear sites in South Carolina. Additionally, I served as Executive Secretary for the Governor's Committee on Criminal Justice; the South Carolina Arson Task Force, South Carolina Committee on Juvenile Justice; Governor's Committee for Emergency Management Services and South Carolina Committee on Police and Community Relations.

I previously served two consecutive terms as Chairman of the National Criminal Justice Association. In addition to my service in Federal and State government, I was an elected Councilman for the Ridgeway, South Carolina, Town Council.

I have earned my Master in Education from the University of South Carolina, where I also did postgraduate work in pyschology. My Bachelor of Arts degree in psychology is from the University of the South, Sewanee, Tennessee.

Senator STAFFORD. Thank you very much, Mr. Thomas, for a very good statement. I have at this point only two questions which are really a formality. One is to inquire if you or any member of your family have any financial interest which might put you in a conflict of interest position as far as your duties at the EPA are concerned?

Mr. THOMAS. No; we don't.

Senator STAFFORD. Would you be willing at the request of the Congress to appear in front of it as a witness?

Mr. THOMAS. Yes, I would.

Senator STAFFORD. I have no other questions at this time.

Senator Moynihan?

Senator MOYNIHAN. I do, sir.

Given the career and public service of Mr. Thomas, do you have any financial interests?

Mr. THOMAS. As a matter of fact, that is why I had no problem in coming to EPA. I have very few.

Senator MOYNIHAN. I want to congratulate our new colleague and welcome him officially to a post of high honor and responsibility.

Mr. THOMAS. Thank you, Senator.

Senator STAFFORD. We are glad you are here, Mr. Thomas. It is an entirely new and different and pleasant experience than between the EPA and this committee over the last 2 years and I think your confirmation will be a formality. I think we will let you go.

I understand some of the committee staff are awaiting even now to confer with you on matters that came up earlier today.

So thank you for being with us and we will act on your confirmation as soon as we can get it scheduled.

Mr. THOMAS. Thank you, sir.

Senator STAFFORD. The committee is adjourned.

[Whereupon, at 3 p.m., the committee hearing was adjourned.]

[Mr. Thomas' résumé, financial statement, and responses to questions from Senator Moynihan follow:]

23-034 O - 83 - 2

LEE M. THOMAS
Woodbridge, Virginia 22191

PROFESSIONAL EXPERIENCE

March 25, 1983-Present: Appointed by President Reagan as Acting Deputy Administrator
U.S. Environmental Protection Agency

February 23, 1983-Present: Appointed by President Reagan as Acting Assistant Administrator for Solid Waste and Emergency Response
U.S. Environmental Protection Agency

Advises the Administrator of EPA on policies and programs to protect the health, safety and well-being of the American people from hazardous materials and other solid wastes. Has direct management and operational responsibility for implementing the the Resource Conservation and Recovery Act (RCRA) for control of present-day producers of hazardous wastes; and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which established a $1.6 billion fund (Superfund) to handle dangerous hazardous-waste accumulations of the past.

October 1982-February 1983: Appointed Executive Deputy Director
Federal Emergency Management Agency

Assisted and advised the Director in the formulation, development and implementation of all policy, planning programming, management, and administrative activities for the Agency.

October 1981-February 1983: Appointed Associate Director, State and Local Programs and Support
Federal Emergency Management Agency

Responsible for policy development in the areas of Federal preparedness and continuity of government. Participated as manager in all major classified exercises. Major domestic program responsibilities include the Civil Defense Program; Disaster Relief Program; Floodplain Management Program; Earthquake Hazard Reduction Program; Radiological Emergency Preparedness Program; and the coordination of Federal response to all emergencies. Executive Secretary of the Emergency Mobilization Preparedness Board, and Chairman of the U.S./Mexican Working Groups on Hydrological Phenomena and Geological Phenomena. Served as the U.S. Representative to the NATO Committee on Civil Defense.

June 1981-October 1981: Consultant to FEMA management in the State and Local Programs and Support area.

July 1979-June 1981: Director, Division of Public Safety Programs
Office of the Governor, State of South Carolina

Responsibilities included coordination of all emergency management activities for the Governor, as well as liaison with public safety agencies at the State and local level. Responsible for the direction of the public safety planning units for criminal justice, highway safety, comprehensive emergency management, and public safety grants. Chairman of Governor's Task Force on Emergency Response Capabilities in Support of Fixed Nuclear Facilities. Established the Governor's Comprehensive Emergency Management Advisory Committee. Served as the State's spokeman for emergency assistance efforts.

August 1977-July 1979: Independent Consultant

Independent consultant in criminal justice planning and management which included criminal justice agency operations and analysis, plan development, project management, and management analysis.

1972-1977: Executive Director, Office of Criminal Justice Program
Office of the Governor, State of South Carolina

Responsible for development of criminal justice plans for the State, administration of Law Enforcement Assistance Administration funds for criminal justice, and provision of staff support to the Governor and his Executive Staff in criminal justice matters.

1971-1972: Director, Comprehensive Offender Rehabilitation Program
Office of the Governor, State of South Carolina

Directed the development and implementation of a statewide plan aimed at providing manpower services to adult offenders; established and managed $2 million in projects, including state's first pretrial intervention program for adult felons, a comprehensive training program for security employees of the South Carolina Department of Corrections, and a crisis intervention program for juvenile offenders.

| | |
|---|---|
| 1970-1971: | Research Analyst and Resource Development Specialist<br>South Carolina Department of Corrections<br>Assisted in program development, implementation and evaluation, including the establishment of first drug treatment program for inmates; employment placement program for inmates in pre-release; and recruitment and training program for security personnel. |
| 1968-1970: | Probation Officer, Richland County (South Carolina) Family Court<br><br>Managed a caseload of approximately 100 juvenile offenders under the supervision of the court; additionally, developed volunteer program and served as Assistant Intake Officer for Court. |
| 1967-1968: | Assistant Manager, The Thomas Company<br><br>Assisted manager in buying, selling and general management of business. |

TEACHING EXPERIENCE:

| | |
|---|---|
| 1970-1971: | Instructor, Palmer Junior College, Columbia, South Carolina, in Correctional Administration Assocate Degree Program |
| 1978-1980: | Instructor in Crime and Systems Analysis for Criminal Justice Training Center, Florida State University, and Criminal Justice Training Center, Washburn University, Topeka, Kansas |

EDUCATION:

Virginia Episcopal School, Lynchburg, Va. - High School Diploma - 1962
University of the South, Sewanee, Tenn. - B.A., Psychology - 1967
University of South Carolina, Columbia, S.C. - M.Ed., Rehabilitation Counseling
University of South Carolina, Columbia, S.C. - Post-Graduate Studies, Psychology - 1971

ASSOCIATIONS AND COMMUNITY ACTIVITIES:

Served two consecutive terms as Chairperson, National Criminal Justice Association Councilman, Ridgeway (S.C.) Town Council
Senior Warden, St. Stephens Episcopal Church Vestry

PERSONAL:

Born Ridgeway, South Carolina, June 13, 1944
Married; three children

United States of America
**Office of Government Ethics**

Office of Personnel Management
Washington, D.C. 20415

JUN 7 1983

Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Lee M. Thomas, who has been nominated by President Reagan for the position of Assistant Administrator for Solid Waste and Emergency Response, Environmental Protection Agency (EPA).

We have reviewed the report and have also obtained advice from EPA concerning any possible conflict in light of the Agency's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Thomas is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David R. Scott by L.a.
David R. Scott
Acting Director

Enclosure

SF 278 (Rev. 8-92)
OPM Chapter 735
U.S. Office of Personnel Management

# FINANCIAL DISCLOSURE REPORT

Form Approved
OMB No. 3209-7202



Reporting Status (Check Appropriate Box)

☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Report

**NOTE**
All schedules must be filled. Enter "None" in areas or across schedules where appropriate.

| Agency Use Only | OGE Use Only |
|---|---|
| Date of Filing (Month, Day, Year) 5/11/83 | MAY 1983 |

| | Last Name | First Name and Middle Initial |
|---|---|---|
| Reporting Individual's Name | Thomas | Lee M. |
| Position for Which Filing | Title of Position: Assistant Administrator for Solid Waste & Emergency Response | Department or Agency (If Applicable): Environmental Protection Agency |
| Location of Present Office | Address (Number, Street, City, State and Zip Code): 401 M Street, S.W., Washington, D.C. 20460 | Room Number: S-360 |

| Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.) | Termination Date (If Applicable) (Month, Day, Year) | Telephone No. (Include Area Code) |
|---|---|---|
| | | (202) 382-4610 |

| Presidential Nominees Subject to Senate Confirmation | Name of Congressional Committee Considering Nomination | Do You Intend to Create a Qualified Diversified Trust? |
|---|---|---|
| | Senate Committee on Environment and Public Works | ☐ Yes ☒ No |

| Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above) | Title of Position(s) and Date(s) Held |
|---|---|
| | Associate Director, Federal Emergency Management Agency, June 1981 to present; Acting Assistant Administrator for Solid Waste & Emergency Response, Environmental Protection Agency, February 1983 to present; Acting Deputy Administrator, Environmental Protection Agency, March 1983 to present |

| Certification | Signature of Reporting Individual | Date (Month, Day, Year) |
|---|---|---|
| I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge. | Lee M. Thomas | 5/10/83 |

| Agency Ethics Official's Opinion | Signature of Designated Agency Ethics Official/Reviewing Official | Date (Month, Day, Year) |
|---|---|---|
| The information contained in this report discloses no conflict of interest under applicable laws and regulations. | Gerald H. Yamada | 5/16/83 |
| Office of Government Ethics Use Only | Signature: David R. Scott by E.S. (5-19-83) | Date (Month, Day, Year): 6-7-83 |

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

Seibels Bruce and Jefferson Pilot are insurance companies. Jefferson Pilot also holds radio and TV stations and newspapers.

(Check box if comments are continued on the reverse side) ☐

1980 Edition of SF 278 is Usable

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## INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

| | Yes | No |
|---|---|---|
| Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust? | | X |
| If "yes", have you reported the income from the trust? | N/A | |
| If "yes", have you reported the assets of the trust? | N/A | |
| If "yes", is this trust an "excepted" trust? | N/A | |
| or "qualified" trust? | N/A | |

| | Yes | No |
|---|---|---|
| Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported? | | X |

If you answered "no", you certify to all of the following:

1. They represent solely your spouse's or dependent child's financial interest or responsibility;
2. They are not, in any way, past or present, derived from your income, assets, or activities;
3. You neither derive, nor expect to derive, any financial or economic benefit from them; and
4. You do not have knowledge as to the composition of such interest or liabilities.

| Yes | No |
|---|---|
| N/A | |

Page Number 2 — Schedule A

Reporting Individual's Name: Thomas, Lee M.

Agency Use Only

Date of Filing (Month, Day, Year)

| Identification | Income: Type of Income | | | | | | | Income: Category of Amount or Value | | | | | | | | | | Interests in Property: Valuation of Assets | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Spouse / Dependent Child (DC) | Dividends | Rent | Interest | Capital Gains | Ex. Fund | Trust | Other (Specify) | None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | Over $100,000 | Actual Amount | Only if "Other" Specified | Only if Honoraria | None (or less than $1,001) | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | Over $500,000 |
| Condominium Unit, Columbia, South Carolina | | X | | | | | | | | X | | | | | | | | | A | | | | X | | |
| Common Stock Dividends: | | | | | | | | | | | | | | | | | | | | | | | | | |
| Bank of Ridgeway, Ridgeway, South Carolina | X | | | | | | | | X | | | | | | | | | | A | X | | | | | |
| Seibels Bruce Corp., Columbia, South Carolina | X | | | | | | | | X | | | | | | | | | | A | X | | | | | |
| Jefferson Pilot Corp., North Carolina | X | | | | | | | | X | | | | | | | | | | A | X | | | | | |

Financial Disclosure Report
(Rev. 6/81)

## PURCHASES, SALES, AND EXCHANGES

This schedule is applicable only in the case of annual and termination reports.

| Page Number | 3 | Schedule B |
|---|---|---|

Reporting Individual's Name: Thomas, Lee M.

Agency Use Only

Date of Filing (Month, Day, Year)

Report Applicable Transactions, Even if Also Reported on Schedule A

| $ or DC | Identification of Property (real and personal) | Type of Transaction | | | Date (Month, Day, Year) | | Category of Amount or Value (✓) | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Purchase | Sale | Exchange | Purchase | Sale or Exchange | $1,001 to $5,000 | $5,001 to $15,000 | $15,001 to $50,000 | $50,001 to $100,000 | $100,001 to $250,000 | Over $250,000 |
| | Not applicable | | | | | | | | | | | |
| | [Seperate "annual report" as Associate Director of Federal Emergency Management Agency filed May 1983] | | | | | | | | | | | |
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Rev. 6/91

## GIFTS AND REIMBURSEMENTS

**This schedule is applicable only in the case of annual and termination reports.**

| Page Number | 4 | Schedule C |
|---|---|---|
| Reporting Individual's Name: Thomas, Lee M. | | |
| Agency Use Only | | |
| Date of Filing (Month, Day, Year) | | |

I. Lodging, Transportation, Food and Entertainment—*List each source totaling $250 or more in value*

| S or DC | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | Not applicable | | |
| | | | |
| | | | |
| | | | |
| | | | |

II—All Other Gifts—*List each source totaling $100 or more in value*

| S or DC | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | Not applicable | [Separate "annual report" as Associate Director of Federal Emergency Management Agency filed May 1983] | |
| | | | |
| | | | |
| | | | |
| | | | |

III. Reimbursements—*List each source totaling $250 or more in value*

| S | Source (Name and Address) | Brief Description | |
|---|---|---|---|
| | Not applicable | | |
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(Rev. 6/91)

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

| Reporting Individual's Name | Agency Use Only | Page Number | | Schedule |
|---|---|---|---|---|
| Thomas, Lee M. | Date of Filing (Month, Day, Year) | | 5 | D |

## LIABILITIES

| S or DC | Name and Address of Creditor | Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term | Category of Amount or Value (✓) $10,001 to $15,000 | $15,001 to $50,000 | $50,001 to $100,000 | $100,001 to $250,000 | Over $250,000 |
|---|---|---|---|---|---|---|---|
| | South Carolina Federal Savings & Loan Association | Mortage on rental condominium in Columbia, South Carolina listed on Schedule A; 1978, 8%, 30 years | | x | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

## POSITIONS HELD

| Name and Address of Organization | Type of Organization | Position Held | From (Mo., Yr.) | To (Mo., Yr.) |
|---|---|---|---|---|
| None | | | | |
| | | | | |
| | | | | |
| | | | | |

## COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

| Source (Name and Address) | Brief Description of Duties |
|---|---|
| None | |
| | |
| | |
| | |

## RELATIONS WITH OTHER EMPLOYERS

| Description of Terms of Any Agreement or Arrangement | Parties | Date (Mo., Day, Yr.) |
|---|---|---|
| None | | |
| | | |
| | | |
| | | |

QUESTIONS FROM SENATOR MOYNIHAN

1. What are your plans for supporting State RCRA Subtitle D activities with Federal funds and completing the national open dump inventory?

Subtitle D of RCRA established a State-Federal cooperative effort to encourage environmentally sound methods of managing solid waste. Under Subtitle D, EPA developed and published "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR 257). These criteria, which are implemented by the States rather than EPA, establish performance standards for solid waste disposal facilities. In addition, EPA was also assigned the role of developing guidelines for State solid waste management plans. From FY 1977–FY 1981 EPA also provided States with funds and guidance to develop their solid waste management programs. State program development under Subtitle D included the development of State regulatory and enforcement programs, the inspection and evaluation of disposal facilities, and the development of comprehensive State plans. Since that time States have been responsible for managing their solid waste programs in accordance with their plans and overall State priorities.

To date, 22 States have adopted regulations at least as stringent as the Federal criteria and have EPA-approved plans, and 5 States have partially approved plans. Additionally, 26 States have draft or adopted plans under review by EPA.

The States have evaluated only a small percentage of the solid waste disposal sites in the country. Large numbers of industrial on-site landfills and surface impoundments have not been evaluated for the open dump inventory.

I have directed my staff to evaluate the need for further impetus to complete the open dump inventory, and to evaluate the environmental and health impacts of the present solid waste management program and alternatives. I will be assessing the resources which would be needed to support an initiative in this area and will be discussing these needs with the Administrator.

2. What level of funding will you recommend for program grants to the States under RCRA Subtitle "C"? Do you believe that Federal financial support to the States is necessary for an effective national hazardous waste management program?

The President's Budget for FY 1984 reflects a level of $42.5 million. This is the level on which we and the States are presently basing our plans and grant negotiations. However, we are initiating a re-examination of the adequacy of the funding level, State capabilities and needs, and the ability of the States to beneficially employ additional funds above this level. This review reflects my commitment to continued financial support to States and my belief that active and progressive State participation in the national hazardous waste management program is essential.

3. What are your plans to speed up cooperative agreements/State Superfund contracts under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96–510?

One major step I recently instituted to speed up the initiation of remedial activities is to no longer require the States to fund 10% of the costs of remedial planning activities. A number of States are now able to proceed with these projects with that requirement removed. Additionally, many States are now electing to have EPA's contractors conduct these planning activities. Because EPA's contracts are already in place, work can begin almost immediately; whereas with State contracting, several months are required to select a contractor before work can begin.

Also, we are working now on a plan to delegate to the Regional Administrators the responsibility for review and approval of cooperative agreements and State Superfund contracts. This should streamline the process somewhat. However, the principal purpose of delegating to the Regions is not to save time. Rather, it is a reflection of our philosophy that program responsibility should rest at the level that the program activity is taking place. In the early stages of the Superfund program, it may have been appropriate to have all decisions made in Headquarters. However, now that our procedures and policies are, for the most part, in place, additional responsibility for managing the program can be delegated to the Regions.

4. Favorable recommendations on two New York State projects on the National Priority List have been forwarded to USEPA. These projects—Sinclair Refinery, the top priority project in New York and Number 6 on the National List, and Marathon Battery—are awaiting approval of the cooperative agreements? How soon could we expect these approvals, and when might these projects proceed?

The Sinclair Oil Refinery cooperative agreement is now in final processing for award. It should be sent to the State for their acceptance in early July. We are also processing the Marathon Battery cooperative agreement for award. However, there may be potential delay while the issue of State cost share is resolved for this and several similar sites. Currently, the award would provide 100% Federal funding for remedial planning activities. At issue is whether EPA should require a 50% cost share at Marathon since the site is a publicly-owned contaminated navigable waterway.

# NOMINATIONS

## ALVIN L. ALM

MONDAY, AUGUST 1, 1983

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
*Washington, D.C.*

The committee met, pursuant to notice, at 2:13 p.m., in room SD-406, Dirksen Senate Office Building, Senator Robert T. Stafford (chairman of the committee) presiding.

Present: Senators Stafford, Baker, Domenici, Simpson, Humphrey, Randolph, and Moynihan.

### OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. The Committee on Environment and Public Works will please come to order.

Good afternoon to all of our guests and to the nominees who are here with us this afternoon.

We meet today to consider three important nominations, two for positions at the Environmental Protection Agency and one for membership on the very important Nuclear Regulatory Commission.

The first nominee we will hear this afternoon is Alvin Alm, who has been nominated for the position of Deputy Administrator of EPA. He will be followed by Howard M. Messner, nominee for the position of Assistant Administrator for Administration of EPA.

Finally, the committee will hear Frederick M. Bernthal, who has been nominated to be a member of the Nuclear Regulatory Commission.

Mr. Alm has an impressive record of Government service under both Republican and Democratic administrations. In fact, he came before this committee almost exactly 10 years ago as a nominee for Assistant Administrator for Planning and Management at EPA.

Since leaving EPA in 1977, Mr. Alm has served as Assistant Secretary for Policy and Evaluation, Department of Energy, and, more recently, as director of the Harvard energy security program and lecturer at the Kennedy School of Government.

Mr. Messner has an equally impressive record of Government service in a series of important management positions in both the executive and legislative branches. At his confirmation hearings, Administrator Ruckelshaus stated that his first priority would be

to recruit the best people he could find to manage the agency. These nominations seem to this Senator to provide strong evidence that he is achieving that goal.

Frederick M. Bernthal is familiar to the Senate and members of this committee as chief legislative assistant to the majority leader. He also has a very strong scientific background which should stand him in good stead at the Nuclear Regulatory Commission.

At this point in the record the Chair, without objection, will reserve the opportunity for Senator Randolph and any other members who wish to make opening statements to have them placed immediately after my own and Senator Randolph's statement.

### OPENING STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Mr. Chairman, today we will also hear from the nominee to the Nuclear Regulatory Commission, Dr. Fred Bernthal. The Nuclear Regulatory Commission is faced with many important issues. One of the most pressing is the need for effective, demonstrated emergency evacuation plans. The Commission is also continually faced with the results of inadequate quality control in the building and maintenance of nuclear facilities. While I realize that the Commission is working on the problem of quality control, much more needs to be done. I remind Dr. Bernthal that this committee often seeks the counsel of the Commissioners in matters of legislation regarding the NRC and that we will be interested in hearing his views on the licensing reform legislation presently pending before the Subcommittee on Nuclear Regulation.

### OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. I want to join in welcoming Dr. Bernthal here today to this hearing, upon his nomination to be the next Commissioner of the Nuclear Regulatory Commission.

Fred Bernthal really needs no introduction to the members of this committee. Since coming to work for the Senate, he has served with distinction in a variety of capacities for Senator Howard Baker, including 3 years as his chief legislative assistant. Over the years, the members of this committee have come to know Fred well as he has dealt with some of the most controversial, emotion-laden issues that we have addressed—and done so in a very reasoned, balanced, and objective fashion. Indeed, he has been of particular assistance to me from virtually the day I arrived in the Senate and assumed my responsibilities—first as ranking minority member and then as chairman of this committee's Subcommittee on Nuclear Regulation. I have come to respect his judgment and value his opinions, and I look forward to what I trust will be a productive working relationship as he assumes the important responsibilities as a Commissioner of the NRC.

For those of you who may not know Dr. Bernthal and I share a bond that goes beyond my arrival here in the Senate in 1979—Fred was born in my home State of Wyoming in the town of Sheridan, and spent his early years there, prior to going on to school at Valparaiso University. Following graduate work at the University of

California at Berkeley, Fred went on to become a tenured professor at Michigan State University. In 1978, he was named Congressional Science Fellow of the American Physical Society, and joined the staff of Senator Howard Baker as legislative assistant for energy, science, and technology issues.

As you are no doubt familiar with by now, Fred, the responsibilities of the Commission are considerable, and the tasks that will confront you over the next weeks, months, and years are exceedingly formidable—and throughout all of this, the paramount responsibility of the Commission is to protect the public health and safety and the environment.

Emergency planning, licensing, and regulatory reform, implementation of the Nuclear Waste Policy Act, Price-Anderson, and others, are but a few of the issues that will require your immediate attention. These are also issues of great interest to me, as chairman of the Nuclear Regulation Subcommittee, and I look forward to working closely with you as the Commission, the Congress, and the country resolve these issues.

Senator STAFFORD. The Chair will take this opportunity, too, to advise all staff who are present on behalf of their members that definitely there will be a meeting of the committee on Wednesday morning at 10 o'clock, and that it will be the chairman's intent, the various rules of the committee having been complied with, and any answers in writing having been provided, and the membership willing, that we act on several nominations, some building naming, and other matters at that time.

I guess we will start, Mr. Alm, if you will come to the witness table, bearing in mind that if Senator Randolph is able to get here that we will interrupt proceedings to allow him to make whatever opening statement he wishes.

We are very glad you are here, and we will be happy at this point to hear any statement you wish to make.

## STATEMENT OF ALVIN L. ALM, TO BE DEPUTY ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Mr. ALM. Mr. Chairman, I can either summarize my statement or, if you wish, I can read the statement.

Senator STAFFORD. Coming from northern New England, you know what my answer is going to be. I suggest you summarize it. We will place the entire statement in the record.

Mr. ALM. What I would like to do, Mr. Chairman, is not describe my experience, which is like reading one's résumé, but rather talk about two things: First, why I am interested in this position and, second what I think the position actually entails.

There are three reasons that I am particularly interested in the position of Deputy Administrator of EPA.

First, I believe strongly in the mission Congress has given the Agency. A clean environment can no longer be considered a luxury, but rather a necessary part of an industrialized society. Since I last served as Assistant Administrator of EPA, the nature of many of the problems has changed, but the problems themselves are still around with us. During that time, the importance of envi-

ronmental protection to the public health of the American people has if anything, increased.

While we have made substantial progress in reducing gross pollution levels, we have not made equal progress in reducing hazardous and toxic materials, nor in dealing with some of the more intractable problems, such as nonpoint sources of water pollution. I would like to contribute to achieving the goals and objectives established by the Congress, and believe that my experience will enable me to do that.

Second, I feel very strongly about EPA as an institution. EPA has had a reputation for being one of the best-managed agencies in Government and one with an extremely talented and professional staff. The turmoil over the past 2 years has obviously adversely affected morale and productivity, but not the quality of the staff. I would hope to contribute to improving morale and productivity within the Agency and to achieve the standards of excellence that EPA had attained in the past.

Third, I am extremely enthusiastic about working for the current Administrator, William Ruckelshaus. I have had the opportunity to work for many great public servants in my career, and Bill Ruckelshaus is certainly in that tradition. He is a person of great integrity, vision, and ability. I feel honored that he has chosen me for this position, and am excited about the possibility of working with him as Deputy Administrator.

As an aside, I must say that I am equally happy to be working with such a team of talented people as Bill is putting together. I am particularly delighted that I will be working with Howard Messner who, if confirmed, will be the Assistant Administrator for Administration. Howard worked for me at EPA before. He is an extremely talented administrator, a superb public servant, and someone who will make a substantial contribution.

Now, if I may, I would like to discuss the three major responsibilities of the Deputy Administrator. These are duties that Bill Ruckelshaus and I have talked about.

First, the Deputy Administrator will act as the internal manager of the Agency's operations. Essentially, he will be responsible for overseeing the Agency's varied work products—from developing standards and regulations to making inspections, issuing permits, preparing congressional reports, and, most important, achieving compliance with environmental statutes.

The workload of the Environmental Protection Agency is immense. Over 250 major standards and regulations are in progress, 1,000 major water permits must be reissued by 1987, 8,000 RCRA permits must be issued by 1991, and more than 500 Superfund sites are scheduled for removal or remedial actions. Staying on top of this vast volume of work is a major challenge. Only through assiduous use of the Agency's management accountability system and use of a system that aggressively tracks progress can we be successful in meeting our responsibilities in a timely manner. To me, that is the essence of my job—making sure that we do things and do them in a much more effective and timely manner.

Second, I will act in the Administrator's absence and will make some decisions in cases where the Administrator has recused himself.

Third, the Deputy Administrator will oversee the policy development process so that the Administrator can make decisions on the basis of the best information possible. The policy development process must not only inform agency decisionmaking, but should also lay out for the Congress and the public the choices that are available and their implications for society.

The Deputy Administrator will also be responsible for overseeing task force efforts to address a wide variety of critical issues, such as developing a dioxin strategy, a ground water operational plan, a compliance strategy, and improved operations through a better delineation of Federal and State roles in achieving environmental improvement.

The development of a policymaking process that brings together better science, economics, and technical work—while encouraging the public and various interest groups to participate actively is a critical role for the Deputy Administrator.

Finally, the Deputy Administrator will undertake specific tasks that are assigned by the Administrator.

In a sense I view the job of the Deputy Administrator as similar to that of the chief operating officer of a corporation. The chief executive officer, who has a role similar to the Administrator, is responsible for policy decisions and overall direction of the corporation. The chief operating officer is responsible for implementing the decisions and direction on a day-to-day basis.

I am extremely excited about the possibility of becoming Deputy Administrator of EPA. Few jobs anywhere can provide greater challenge and opportunity for serving the public. If confirmed, I pledge to work closely with this committee and the Congress in assuring that EPA statutory authorities are implemented effectively and efficiently.

Mr. Chairman and members of the committee, I would be happy to answer any questions that you might have.

Senator STAFFORD. Thank you very much, Mr. Alm. There will be some questions, but first, before I recognize Senator Randolph for a statement, I want to state as an individual as well as chairman of this committee that I am just delighted to have our most valued member, Pete Domenici, with us this afternoon looking so robust and well.

Senator Domenici, we are very happy to see you here.

Senator DOMENICI. I am pleased to be here, Mr. Chairman.

Senator STAFFORD. Great.

Senator RANDOLPH. I wonder if we could just say hello this way [beginning to clap].

[Applause.]

Senator DOMENICI. I can sit closer because I am not going to smoke anymore.

I really am very fortunate. I did have a typical operation on my lung. I was going to say they found nothing, but that would have been the case if they had been operating on my head.

They found no malignancy. It is all just some old scar tissue from perhaps previous pneumonias, so I am very pleased to be back and very thankful and most appreciative of all the kind thoughts that you and many others here in the Senate exhibited toward me. I am most appreciative.

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Thank you, Mr. Chairman.

Senator STAFFORD. Well, we are very happy you are here.

Senator Randolph, do you have an opening statement? We have listened to Mr. Alm, but I have reserved your right to put a statement in, read it, or whatever you wish at this point.

Senator RANDOLPH. Thank you very much, Mr. Chairman.

It was necessary that I meet with some people and that delayed me. Can I say they were from West Virginia?

Senator STAFFORD. There was a certain suspicion that was the case, anyway.

Senator RANDOLPH. We are arranging for our Festival of Flight. You, as one of the very few Members of the Senate who flies his own plane to and from Vermont, have a special interest in the programs that are being held in this bicentennial year of air and space.

I remember many years ago, so many I will not even try to check them out, but to you and Pete, I took a man 85 years of age—he was older than I am, if you can believe it—on his only flight. We had a little single engine plane, and I helped him into the aircraft and fastened his seatbelt. We taxied down the runway, Mr. Chairman. I was good at that time on takeoffs and poor on landings, but he wouldn't say a single word. He was 85 years of age. He looked stoically ahead, not at the countryside and the valley there.

We came bouncing in, and I opened the door and helped him as he stepped to the runway. I said, "Uncle Dudley, were you frightened?" He said, "No, but I never did let my full weight down in it."

Senator STAFFORD. Senator, if you are going to reminisce, I am going to, also.

You remind me that at the age of 93, I think, I finally got my mother to go flying with me on a Sunday. I picked a very calm day to do it because she was addicted to motion sickness. I finally got her up and we made a very sedate flight around our hometown of Rutland. Then when we came in for a landing I was being super careful. We got down over the runway and she said, "My, Robert, that was a nice smooth landing." Just as she said it, we stopped flying and fell the last 3 feet onto the runway.

Senator RANDOLPH. I guess we can both say that we have had some rough landings in legislation before this committee across the years.

We are very happy to have you with us, Alvin. I know of your work. You are nominated to be the Deputy Administrator, with Howard Messner as the Assistant Administrator for Administration of the Environmental Protection Agency.

Mr. Chairman, I have followed the career of Mr. Alm. I have done it with not just interest, but I have done it with an appreciation, because I think it is for more than 10 years that I remember his service. Is that approximately right?

Mr. ALM. That is about right, about 10 years, Senator.

Senator RANDOLPH. You had been with the Council on Environmental Quality, and we worked with you then for a period of about 3 years.

Then I watched the following years of your service with the EPA. I believe that ended in 1977. Is that right?

Mr. ALM. That is correct, Senator.

Senator RANDOLPH. What have you been doing since that time, Mr. Alm?

Mr. ALM. I spent 2 years with the Department of Energy as Assistant Secretary for Policy. Then I have been at Harvard University for the past 3½ years.

Senator RANDOLPH. What were you doing at Harvard?

Mr. ALM. I have——

Senator RANDOLPH. Excuse me. Anybody who goes to Harvard, I have to ask what they are doing.

Mr. ALM. Well, I was a lecturer, which meant I taught classes now and then. I also ran a research program. As a matter of fact, we had a member of this committee staff, Kathy Cudlipp, up to lecture our class and she did an outstanding job.

Senator RANDOLPH. I know you have great expertise. This is something we know, many of us who have worked with you. You also have a high sense of integrity and commitment to whatever you have been doing in Government.

Mr. Chairman, is this the second spot at EPA? Will it actually be that responsibility?

Senator STAFFORD. Yes.

Senator RANDOLPH. As Deputy Administrator, I do not know whether you will serve as the right arm or left arm of Mr. Ruckelshaus, but I know that as he makes these very difficult decisions, highly crucial and important decisions, there will be areas in which you have this expertise, and you will be very helpful to him and to those of us in the Congress and to the aims for which EPA came into being. It was from this committee that EPA came. We have constantly, of course, thought in terms of its fulfillment of the many promises and challenges that it presents.

Are we making comments only on Mr. Alm now?

Senator STAFFORD. In your opening statement comment on all three.

Senator RANDOLPH. All right.

Howard Messner has also been almost an alumnus of the EPA. He served as the Deputy Assistant, and that was 1970 to 1975.

I remember his background when he worked with our Congressional Budget Office. I have been impressed with his abilities certainly, Mr. Chairman.

In this new position he will head the management activities of the Agency, where certain of his experience and background will serve him weil. I think he is an excellent candidate and should be supported by us, if there is not some reason that I do not know.

Both of these nominees I hope will be promptly confirmed.

I know all members of the committee will enjoy and profit by working with these two men.

Senator STAFFORD. Thank you very much, Senator.

Senator Domenici, do you have any opening statement you wish to make here?

Senator DOMENICI. No, thank you.

Senator STAFFORD. All right. Thank you.

In that case, Mr. Alm, I would guess from what has been said about you so far and what Bill Ruckelshaus has said about you in private, your greatest problem will be to live up to your advanced billing when you are confirmed.

I have a couple of usual questions.

Would you be willing, at the request of any committee of the Congress, to appear in front of it as a witness at any time?

Mr. ALM. Yes, Mr. Chairman.

Senator STAFFORD. Do you now own any properties or have any financial interest or connections that might pose problems of conflict of interest in the carrying out of your duties as Deputy Administrator at EPA?

Mr. ALM. No; I do not.

Senator STAFFORD. Do you perceive any conflict of interest between energy development and conservation goals and our environmental goals?

Mr. ALM. Senator, I think that there is no conflict between the two, and I see none.

Senator STAFFORD. In your statement you discuss the immense workload at EPA, which we agree. Obviously, with respect to your personal involvement in issues, you will have to pick and choose among the array of problems confronting EPA. Could you indicate which issues you expect to devote the most of your time to and why?

Mr. ALM. First of all, in terms of functions, I want to devote my attention to getting the work moving, developing the internal systems that allow us to establish goals, track progress toward those goals, and follow up on the accomplishment of the goals.

A second major priority of mine is to put in place mechanisms for making policy decisions across the board. We currently have 10 task forces dealing with various issues, some of which are management issues, some of which are program issues. The use of this task force mechanism is important because Bill Ruckelshaus and I do not want decisions to be made on the 12th floor and then trickle down. We want active involvement of the career staff at EPA in decisionmaking and in building consensus on the direction the agency ought to go.

This mechanism of bringing together the responsible officials, hammering out what we are doing and how we are going to do it, is the policy development process that I want to see put into place.

I am also very interested in issues dealing with developing better procedures for risk management and risk assessment. I will be commissioning a special study on the Agency's monitoring programs. In addition, we have, of course, to deal with next year's budget, an issue that I will be deeply involved with, along with Howard Messner.

My job, as I see it, is to make the place run on the day-to-day basis. I will be involved with some special projects, but the most important thing is to see that the Agency's management systems work.

Senator STAFFORD. I think that is a good assessment of the situation. I am particularly in sympathy with your saying that you do not want to keep things up on the 12th floor. That was one of the major mistakes that the preceeding Administrator made.

I have no further questions.

Senator Randolph, do you have questions?

Senator RANDOLPH. No, Mr. Chairman.

Senator STAFFORD. All right. Senator Domenici, do you have any questions?

Senator DOMENICI. Thank you, Mr. Chairman.

I did not make an opening statement.

I, too, have known the nominee for some time, most specifically when he worked for the Department of Energy in a most trying and difficult time.

I saw you under some very enormous pressure when we were trying to put that Agency together and when we had the energy crisis. I compliment you for your past work and the President for nominating you, and Mr. Ruckelshaus for finding you and talking you into taking the job.

With reference to the research and development that EPA does, it has been my perception that for the money we have committed to research and development that somehow or another the research arm of EPA is not as vintaged as some of the others, and I acknowledge that, but it has not assumed the kind of prominence and eminence and preeminence that I think it should.

Do you generally agree with that assessment which most scientists looking at it have made?

Mr. ALM. Yes, Senator, I definitely do. There are a number of things that we are trying to get underway to improve the quality of the R&D program.

First of all, the quality of the appointment for Assistant Administrator is critical. We are very hopeful to have an appointee with broad scientific knowledge and with a great deal of respect in the scientific community, which will help improve the relationship between EPA and the scientific community.

We are hoping, then, to get a deputy with solid EPA management experience. We want to get a team, that is a scientific leader and then a good manager as the second person.

Second, we are working toward improving the long-term research program, so that we can anticipate some of the environmental problems and not always react to them.

Third, we are undertaking a program of bringing in first class scientists from universities across the country to spend their sabbatical year at EPA, so that our people can interact with some of the best people in their field.

Finally, we want to make sure that some good research projects are done at the bench at EPA. Unfortunately, we have allowed some of the most exciting work to be contracted out. You can only attract, keep, and motivate good scientists by allowing them to do some basic research work.

I think with all those things we will make some progress in improving our research and development program.

I agree with the Senator that it is critically important. EPA is basically a scientific and technical agency.

Senator DOMENICI. That is right.

Mr. ALM. We ought to have a research program second to none.

Senator DOMENICI. Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Senator Domenici.

The Chair, if there is no objection, will reserve to members of the committee the right to submit questions, should they wish, in writing to the nominees. We know of no questions that will be submit-

ted in that way but, should it occur, we would urge the nominees to respond as rapidly as they can consistent with thoroughness, because it is the committee's intent to confirm these nominations on Wednesday, if we have nothing outstanding to prevent us from doing so.

Mr. Alm, do you have any members of your family here in the room with us?

Mr. ALM. No, I do not.

Senator STAFFORD. All right.

I think that will do as far as you are concerned. I will say, very frankly, that I do not anticipate any serious problems in getting you confirmed.

Mr. ALM. Thank you very much, Mr. Chairman and members of the committee, for your kind words. I do, indeed, look forward, if confirmed, to working very closely with the committee and staff.

Senator STAFFORD. Very good. Thank you very much.

Just a minute, Mr. Alm. I do not know whether Senator Moynihan has any questions.

Senator MOYNIHAN. No, Mr. Chairman.

[Mr. Alm's prepared statement, résumé, responses to written questions, and financial statement follow:]

STATEMENT

OF

ALVIN L. ALM

FOR CONFIRMATION

AS DEPUTY ADMINISTRATOR

OF THE

U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE

U.S. SENATE COMMITTEE

ON ENVIRONMENT AND PUBLIC WORKS

AUGUST 1, 1983

Mr. Chairman and members of the Committee. Ten years ago this committee recommended me for confirmation as Assistant Administrator for Planning and Management at EPA. After confirmation by the full Senate, I served in that position for three and a half years. Today I am honored to be considered by this committee again, for the position of Deputy Administrator of the Environmental Protection Agency.

I would like to briefly outline how I think my experience prepares me for this position, describe why I am interested in accepting this challenge, and lay out what I believe the position entails.

First, allow me to describe my experience.

I began my career as a Management Intern for the Atomic Energy Commission upon graduation from the Maxwell Graduate School at Syracuse University. After one and a half years with the Atomic Energy Commission, I began a seven-year tour with the Bureau of the Budget, now the Office of Management and Budget. From 1966 to 1970, I was a supervisory budget examiner for water resource programs, which included responsibility for the Federal water pollution control program. In that capacity I saw the program rise from an obscure Division in the Department of Health, Education and Welfare to a major program in the Department of the Interior. Besides the normal

budget and policy responsibilities associated with the Office of Management and Budget, I also worked extensively on financing options for the Waste Treatment Grant Program.

From 1970 to 1973, I was Staff Director of the Council on Environmental Quality. During that period of time, I coordinated the development of major environmental legislative initiatives, oversaw the preparation of the CEQ annual reports, and managed the Council's study program. In July 1973, I became the Assistant Administrator for Planning and Management at EPA. In that capacity I was responsible for all program analysis, budgeting, audit, and internal administration. During my tenure at EPA, I was awarded the Arthur S. Fleming Award as one of the Ten Outstanding Young Men and Women in the Federal Service.

In October 1977, following a short period in the Executive Office of the President working for James R. Schlesinger, I became the first Assistant Secretary of Energy for Policy and Evaluation. From October 1979 until May 1983, I was at the John F. Kennedy School of Government of Harvard University where I was a lecturer and directed a research program at the Energy and Environmental Policy Center. Some of my research and teaching was directed at environmental quality issues.

Now I will turn to why I am interested in undertaking the challenge of becoming the Deputy Administrator of EPA. First, I believe strongly in the mission Congress has given to EPA. A clean environment can no longer be considered a luxury, but rather a necessary part of an industrialized society. Since I last served at the Environmental Protection Agency, the nature of many of the issues has changed. Today, we more clearly recognize the human health threats imposed by environmental pollution. While we have made substantial progress in reducing gross pollution levels, we have not made equal progress in reducing hazardous and toxic materials nor in dealing with some of the more intractable problems, such as non-point sources of water pollution. I would like to contribute to achieving the goals and objectives established by the Congress, and believe that my experience will enable me to do that.

Second, I feel strongly about EPA as an institution. EPA has had a reputation for being one of the best managed agencies in Government and one with an extremely talented and professional staff. The turmoil over the last two years has obviously adversely affected morale and productivity, but not the quality of EPA's staff. I would hope to contribute to improving morale and productivity within the Agency and the standards of excellence that EPA had attained in the past.

Third, I am extremely enthusiastic about working for the current Administrator, William D. Ruckelshaus. I have had the opportunity of working for many great public servants in the past and Bill Ruckelshaus is certainly in that tradition. He is a person of great integrity, vision, and ability. I feel honored that he has chosen me for this position, and am excited about the possibility of working with him as Deputy Administrator.

I would now like to discuss the three major responsibilities that Bill Ruckelshaus and I foresee for the Deputy Administrator.

First, the Deputy Administrator will act as the internal manager of the Agency's operations. Essentially, he will be responsible for overseeing the Agency's varied work products -- from developing standards and regulations to making inspections, issuing permits, preparing Congressional reports, and most important, achieving compliance with environmental statutes. The workload of the Environmental Protection Agency is immense. Over 250 major standards and regulations are in progress, 1,000 major water permits must be reissued by 1987, 8,000 RCRA permits must be issued by 1991, and more than 500 Superfund sites are scheduled for removal or remedial actions. Staying on top of this vast volume of work is a major challenge. Only through assiduous use of the Agency's management accountability system and a system that aggressively tracks

progress can we be successful in meeting our responsibilities in a timely manner.

Second, the Deputy Administrator will act in the Administrator's absence and will make some decisions in cases where the Administrator has recused himself.

Third, the Deputy Administrator will oversee the policy development process so that the Administrator can make decisions on the basis of good information. The policy development process must not only inform Agency decision-making, but should also lay out for the Congress and the public the choices that are available and their implications for society. The Deputy Administrator will also be responsible for overseeing task force efforts to address a wide variety of critical issues, such as developing a dioxin strategy, a ground water operational plan, a compliance strategy, and improved operations through a better delineation of Federal and State roles in achieving environmental improvement. The development of a policy-making process that brings together better science, economics, and technical work -- while encouraging the public and various interest groups to participate actively -- is a critical role for the Deputy Administrator.

Finally, the Deputy Administrator will undertake special assignments given by the Administrator. Given the wide range

of EPA's activities, the Administrator may choose to delegate some specific policy areas to the Deputy Administrator.

In a sense I view the job of the Deputy Administrator as similar to that of the Chief Operating Officer of a Corporation. The Chief Executive Officer, who has a role similar to the Administrator, is responsible for policy decisions and overall direction of the Corporation. The Chief Operating Officer is responsible for implementing the decisions and direction on a day-to-day basis.

I am excited about the possibility of becoming Deputy Administrator of EPA. Few jobs anywhere can provide greater challenge and opportunity for serving the public. If confirmed, I pledge to work closely with this Committee and the Congress in assuring that EPA statutory authorities are implemented effectively and efficiently.

Mr. Chairman, I would be happy to answer any questions that you or members of the Committee might have.

ALVIN L ALM

Business Address:
Environmental Protection Agency
401 M St., S.W.
Washington, D.C. 20460
(202) 382-4711

Address:
3022 R St., N.W.
Washington, D.C. 20007
(202) 338-6926

Experience:

Special Assistant to the Administrator
Environmental Protection Agency — May 1983 to Present

Director, Harvard Energy Security Program and Lecturer
Kennedy School of Government — October 1979 to May 1983
Directed the Harvard Energy Security Program, a multidisciplinary research effort conducted by four Harvard research centers, that focused on energy and security issues. Under that program, studies were being conducted on OPEC and the changing nature of the world oil market, the international natural gas market and the interactions between shifts in oil market demand, prices and economic behavior. In addition, taught one course and conducted research on a range of other energy and environmental policy issues.

Assistant Secretary for Policy and Evaluation
Department of Energy — January 1977 to October 1979
Initially worked on the Energy Policy and Planning Staff, Executive Office of the President. Became first Assistant Secretary of Energy for Policy and Evaluation. In that position, supervised policy and financial analysis for the Department, coordinated Department's contribution to Presidential legislation and initiatives, provided policy guidance for planning and budgeting, evaluated Department programs, developed DOE policy reports, including National Energy Plans, directed regulatory reform effort and coordinated policy development efforts of other DOE offices. While in that position, received the Secretary of Energy's Distinguished Service Medal (1979), the highest honor conferred by the Department.

Assistant Administrator for Planning and Management
Environmental Protection Agency — July 1973 to January 1977
Responsible for strategic planning, budgeting, review and coordination of all regulations, and internal management. Directed a staff of 1100 in four locations, provided policy guidance to regional offices, and administered a budget of $80 million. In that position received the Arthur S. Fleming Award as one of the ten outstanding young men and women in government.

Staff Director
Council on Environmental Quality
Executive Office of the President — February 1970 to July 1973
In addition to supervising most of the Council's professional staff, responsible for coordinating development of the President's 1971 and 1972 environmental legislative proposals and evaluating the financial and economic impacts of environmental policies.

Supervisory Budget Examiner
Bureau of the Budget
(now Office of Management and Budget) March 1963 to February 1970
Served in a succession of positions at the Bureau of the Budget, rising to supervisory budget examiner for natural resource programs. In that capacity, played a key role in evaluating and developing proposals to finance the federal water pollution control program, one of the two largest Federal public works programs.

Management Intern
U.S. Atomic Energy Commission July 1961 to March 1963

Education: University of Denver, Bachelor of Arts

Maxwell Graduate School of Public Administration, Syracuse University, Master of Public Administration.

Professional Associations: Serves on a host of temporary and permanent advisory committees, editorial boards and other entities relating to energy and environmental policy including the following:

The Aspen Institute for Humanistic Studies Committee on Energy (Project Director)

National Academy of Sciences, Environmental Studies Board

Environmental Forum, Board of Editorial Advisors

Governor's Electric Utility Cost Reduction Task Force
Commonwealth of Massachusetts, Chairman.

In addition, frequently testified before committees of congress and consulted with a number of organizations.

Awards: Arthur S. Fleming Award, as one of the ten most outstanding young men and women in the Executive Branch, 1975.

The Secretary of Energy's Distinguished Service Medal (1979), the highest honor conferred at the Department.

Merit Pay Bonus, Department of Energy.

EPA nominee for the Rockefeller Public Service Award (1975, 1976).

Outstanding Senior Man, University of Denver (1960)

Numerous fellowships and scholarships for undergraduate and graduate work.

Publications: Published in area of energy and national security, including two chapters in Energy and Security, the report of Harvard's Energy and Security Project; articles in Science magazine, the New York Times, Washington Post, Los Angeles Times, and many other newspapers. Co-editor of upcoming book on energy security.

Co-author of "Utilities in Crisis: A Problem of Governance," (Aspen Institute, 1982); co-author of chapter on cogeneration and small power projects for upcoming book on Electric Power strategic issues and author of short pieces on utility regulation and financing problems.

Author of upcoming book on the effect of environmental regulations on industrial fuel use decisions.

Either authored or co-authored all publications of the Aspen Energy Committee since 1980, covering the topics of transportation fuels, energy supply interruptions, energy policy assessment, utilities in crisis and energy and the western alliance.

QUESTION FOR ALVIN L. ALM
FROM SENATOR STAFFORD

Q. Do you think that the EPA budget process should be modified in any way? And do you think that in recent years EPA has been given adequate resources to do its job?

A. We have requested the National Academy of Public Administration to review thoroughly the EPA budget process. The Panel will be led by Frank Carlucci, former Deputy Director of OMB and Deputy Secretary of Defense and will include a group of distinguished citizens who have had experience in Government. The National Academy review should lead to improvements in the budget process.

Considering the range of EPA's statutory responsibilities, resources over the last few years have not been adequate. On June 13, 1983, the Director of OMB transmitted a request for an additional $265 million above the FY 1984 budget request, based on the Administrator's review of that budget. I believe the Appropriation Bill, passed by the Congress represents a reasonable level of resources to allow EPA to accomplish its mission in FY 1984. We are currently reviewing the budget request for FY 1985 and will recommend to the Office of Management and Budget a budgetary level that will allow the Agency to continue to meet its responsibilities.

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QUESTIONS FOR ALVIN L. ALM
FROM SENATOR SYMMS

Q. How do you think that the environmental policies of this Administration should differ from those of the Carter Administration?

A. In my opinion, the policies enunciated by the Administration reflect an evolution of policy over a number of administrations. Over time, EPA has developed more sophisticated systems of conducting risk assessment, cost-effectiveness and benefit/cost analyses and has used mechanisms, such as emission offsets, trading, and "bubbles", to provide a greater measure of flexibility in regulation. Some of the regulatory reform initiatives begun during the Nixon and Ford Administrations were expanded during the Carter Administration and strengthened even further during the present Administration. They provide proper incentives and flexibility in regulation, either allowing us to achieve set environmental standards at a lower cost or to achieve higher levels of environmental protection at the same cost as rigid requirements.

Q. As a specialist in energy policy, you have had an opportunity to observe the power of market forces and the inevitable failure of policies that fail to take into account those forces. To what extent do you think that economic incentives can be used instead of command-and-control regulation to accomplish environmental objectives?

A. My experience in energy policy clearly brought home to me the importance of market forces and the inevitable failure of centralized solutions. Once crude oil prices were decontrolled, we quickly saw increased production and a reduction in oil demand growth. Partial decontrol of natural gas prices removed shortages and actually brought about a glut in natural gas supplies. I believe that environmental regulations that provide flexibility and economic incentives for compliance are inherently preferable to command-and-control regulation. For this reason, I favor use of tools, such as emission offsets, emission trading, "bubbles" and other mechanisms to increase flexibility and achieve more cost-effective solutions, while at the same time achieving our environmental goals.

Q. One of this Administration's objectives is to return various governmental functions to the States. How do you plan to further this objective in the environmental area?

A. The Administrator has established a task force on Federal/State relations which is designed to clarify relative roles and to turn more environmental responsibilities over to the States. The States currently have many more personnel devoted to environmental improvement than the Federal Government and are key to actual environmental accomplishments. We must learn to trust States in their exercise of authority, without looking over their shoulder and second-guessing them at every turn. I believe that EPA must do a better job of defining the States' role in environmental programs, reach agreement with them on what they would accomplish under delegation of statutory authorities, and then provide general oversight. If States fail to perform, it will be necessary to pull back the authority. But in the interim, the Federal Government should not second-guess individual decisions. With that clear understanding of respective roles and proper apportioning of responsibilities, we have a much better chance of achieving our environmental objectives.

United States of America
**Office of Government Ethics**

Office of Personnel Management
Washington, D.C. 20415

JUL 25 1983

Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Alvin L. Alm, who has been nominated by President Reagan for the position of Deputy Administrator, Environmental Protection Agency (EPA).

We have reviewed the report and have also obtained advice from the EPA concerning any possible conflict in light of the Agency's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Alm is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin by OKS

David H. Martin
Director

Enclosure

# FINANCIAL DISCLOSURE REPORT

Page 1

Reporting Status (Check Appropriate Box)

☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Report

**NOTE**
All schedules must be filed. Enter "None" in areas or across schedules where appropriate.

| Agency Use Only | OGE Use Only |
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| Date of Filing (Month, Day, Year): 6/13/83 | JUN 20 1983 |

| | Last Name | First Name and Middle Initial | Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.) | Termination Date (If Applicable) (Month, Day, Year) |
|---|---|---|---|---|
| Reporting Individual's Name | ALM | Alvin L. | | |
| Position for Which Filing | Title of Position: Deputy Administrator | Department or Agency (If Applicable): Environmental Protection Agency | | |
| Location of Present Office | Address (Number, Street, City, State and Zip Code): 401 M Street, S.W. Washington, D.C. 20460 | | Room Number: 1216 - West Tower | Telephone No. (Include Area Code): 382-4711 (202) |

Presidential Nominees Subject to Senate Confirmation

Name of Congressional Committee Considering Nomination: Environment and Public Works

Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)

Title of Position(s) and Date(s) Held: None

Certification

I CERTIFY that the statements I have made in this form and all attached schedules are true, complete and correct to the best of my knowledge.

Signature of Reporting Individual: Alvin L. Alm — Date (Month, Day, Year): June 1, 1983

Ethics Official's Opinion

On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to the comments below).

Signature of Designated Agency Ethics Official/Reviewing Official: Gerald H. Yamada — Date (Month, Day, Year): 6/17/83

Office of Government Ethics Use Only: GE 12-12 — Signature: David H. Martin by DRS — Date (Month, Day, Year): 8/25/83

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

278-102

## INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

| | Yes | No |
|---|---|---|
| Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust? | | X |
| If "yes", have you reported the income from the trust? | | |
| If "yes", have you reported the assets of the trust? | | |
| If "yes", is this trust an "exempted" trust? | | |
| or "qualified" trust? | | |

| | Yes | No |
|---|---|---|
| Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported? | | X |

If "Yes," do you certify to all of the following?
1. They represent solely your spouse's or dependent child's financial interest or responsibility.
2. They are not, in any way, past or present, derived from your income, assets, or activities.
3. You neither derive, nor expect to derive, any financial or economic benefit from them; and
4. You do not have knowledge as to the composition of such interest or liabilities.

| | Yes | No |
|---|---|---|
| | | |

Page Number 2 — Schedule A

Reporting Individual's Name: Alvin L. Alm

Agency Use Only

Date of Filing (Month, Day, Year)

| Identification | Income: Type of Income | Income: Category of Amount or Value | Interests in Property: Valuation of Assets |
|---|---|---|---|
| Harvard University | 1982 Salary | $52,468. | |
| Aspen Institute for Humanistic Studies, New York, New York | Consulting Fees, 1982 | 16,050. | |
| Gas Research Institute Chicago, Illinois | 1982 Consulting Fee | 4,400. | |
| Gas Research Institute Chicago, Illinois | 1982 Consulting Fee | 1,288.80 | |
| Energy Conference, Columbia Institute for Political Research, Washington, D.C. | 1982 Honorarium | 500 4/6/82 | |
| Dorothy Zinberg, partial payment for book chapter "Energy & Security: Act Two" Harvard University, Cambridge, MA | Commission Fee, 1982 | 300 | |
| Office of Technology Assessment Advisory Committee, Washington, DC | Consulting Fee, 1982 | 400. | |
| Association of Edison Illuminating Companies, Annual Mtg., New York, New York | Honorarium 1982 | 1,500. 10/13/82 | |
| New York Times Article, "What Happens If Oil Prices Plummet?", New York, New York | Honorarium 1982 | 150. 12/14/82 | |
| Conoco, Inc. - Conference Speech Ponca, Oklahoma | Honorarium 1982 | 200. 12/16/82 | |
| Dorothy Zinberg, Book Chapter Harvard University | Commission Fee, 1982 | 600. | |
| Institute of Politics, University of Southern California | Consulting Fee, 1982 | 1,500. | |

(SEE CONTINUATION ATTACHED)

CONTINUATION

INCOME AND INTERESTS IN PROPERTY

| | Yes | No |
|---|---|---|
| ... your spouse ... dependent child receive income from, or have a vested interest in a trust? | | X |
| If "yes", have you reported the income from the trust? | | |
| If "yes", have you reported the assets of the trust? | | |
| If "yes", is this trust an "excepted" trust? ... or "qualified" trust? | | |

| | Yes | No |
|---|---|---|
| ... liabilities ... | | X |
| ... all of the following: | | |
| 1. ... | | |
| 2. ... | | |
| 3. ... | | |
| 4. ... | | |

Page Number 3 A

Reporting Individual's Name: Alvin L. Alm

Agency Use Only

Date of Filing (Month, Day, Year)

| Schedule or Item Number (if additional space is needed) | Identification | Income: Type of Income | | | | | | Income: Amount or Value | | | Interests in Property: Valuation of Assets | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Dividends | Rent | Interest | Capital Gains | | Other (Specify) | None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | Actual Amount (Only if "Other" Specified) | Date (Mo., Day, Yr.) (Only if Honoraria) | $15,000 or less | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | $250,001 - $500,000 | $500,001 - $1,000,000 | Over $1,000,000 |
| | Gulf Management Institute<br>Boston, MA | | | | | | Consulting Fee, 1982 | | | | | | | | 1,000 | | | | | | | | |
| | Harvard University, Cambridge, MA | | | | | | Salary 1/83-5/83 | | | | | | | | 25,872 | | | | | | | | |
| | Boston Edison Co.<br>Boston, MA | | | | | | Consulting Fee, 1983 | | | | | | | | 3,000 | | | | | | | | |
| | TRW, Inc., McLean, Virginia | | | | | | Consulting Fee, 1983 | | | | | | | | 2,000 | | | | | | | | |
| | Massachusetts Institute of Technology<br>Cambridge, MA | | | | | | Consulting Fee, 1983 | | | | | | | | 2,000 | | | | | | | | |
| | Sobotka and Co., Washington, D.C. | | | | | | Consulting Fee, 1983 | | | | | | | | 350 | | | | | | | | |
| | Office of Technology Assessment<br>Washington, D.C. | | | | | | Consulting Fee, 1983 | | | | | | | | 200 | | | | | | | | |
| | Cambridge Energy Research Associates<br>Cambridge, MA | | | | | | Consulting Fee, 1983 | | | | | | | | 4,000 | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| (S) | Property: 100 Allerton Road<br>Milton, MA 02186 | | | | | | None | | | | | | | | | | D | | | | X | | |
| | Property: 6219 33rd Street, N.W.<br>Washington, D.C. | | X | | | | | | | | | X | | | | | B | | | | X | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | Savings Acct: Bay Bank Middlesex<br>1400 Cambridge St, Cambridge, MA | | | X | | | | X | | | | | | | | | | | | | | | |
| | (Savings being transferred to Nat'l. Bank of Washington, 401 M St., S.W., Wash. D.C. 20024) | | | | | | | | | | | | | | | | | | | | | | |

## PURCHASES, SALES, AND EXCHANGES

This schedule is applicable only in the case of annual and termination reports.

Page Number 4 | Schedule B

Reporting Individual's Name: Alvin I Alm

Agency Use Only

Date of Filing (Month, Day, Year)

Report Applicable Transactions, Even if Also Reported on Schedule A

| S or DC | Identification of Property (real and personal) | Type of Transaction | | | Date (Month, Day, Year) | | Category of Amount or Value ( ) | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Purchase | Sale | Exchange | Purchase | Sale or Exchange | $1,001 to $5,000 | $5,001 to $15,000 | $15,001 to $50,000 | $50,001 to $100,000 | $100,001 to $250,000 | Over $250,000 |
| | Not applicable | | | | | | | | | | | |
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SF 278 — Annual Disclosure Report
Rev. 9/91

# GIFTS AND REIMBURSEMENTS

This schedule is applicable only in the case of annual and termination reports.

Schedule 5 | Schedule C

Reporting Individual's Name: Alvin L Alm

Agency Use Only

Date of Filing (Month, Day, Year)

I. Lodging, Transportation, Food and Entertainment—*List each source totaling $250 or more in value*

| Sch C | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | Not applicable | | |
| | | | |
| | | | |
| | | | |
| | | | |

II—All Other Gifts—*List each source totaling $100 or more in value*

| Sch C | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | Not applicable | | |
| | | | |
| | | | |
| | | | |
| | | | |

III. Reimbursements—*List each source totaling $250 or more in value*

| Sch C | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | Not applicable | | |
| | | | |
| | | | |
| | | | |
| | | | |

SF 278—Executive Personnel Financial Disclosure Report
(5 CFR 735.404)

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

| Reporting Individual's Name | Agency Use Only | Page Number | | Schedule |
|---|---|---|---|---|
| Alvin L. Alm | Date of Filing (Month, Day, Year) | | 6 | D |

## LIABILITIES

| S or DC | Name and Address of Creditor | Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term | X Category of Amount or Value (✓) | | | | |
|---|---|---|---|---|---|---|---|
| | | | $10,001 to $15,000 | $15,001 to $50,000 | $50,001 to $100,000 | $100,001 to $250,000 | Over $250,000 |
| | Northern Virginia Savings and Loan Association<br>5350 Lee Highway, Arlington, Virginia 22207 | Mortgage Loan on property at 6219 33rd Street, N.W. Washington, D.C.; Date of Loan: 4-6-79; Interest 8.75% | | | X | | |
| | | Monthly payments: $1012.00 PITI , 12 years | | | | | |
| | U.S. Department of Energy Credit Union<br>1000 Independence Ave., S.W., Washington, D.C. | 2nd Trust Loan on property at 6219 33rd Street, N.W. Washington, D.C.; Date of Loan: 10-11-79; Interest 12% | | X | | | |
| | | Monthly payments: $394.00, 28 years | | | | | |

## POSITIONS HELD

| Name and Address of Organization | Type of Organization | Position Held | From (Mo., Yr.) | To (Mo., Yr.) |
|---|---|---|---|---|
| Harvard University, Cambridge, MA | University | Faculty | 10/79 | 5/83 |
| | | | | |
| Aspen Institute for Humanistic Studies<br>New York, New York | Non-Profit | Consultant | 10/79 | 5/83 |
| | | | | |

## COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

| Source (Name and Address) | Brief Description of Duties |
|---|---|
| Harvard University<br>Cambridge, MA | Supervised Research Programs and Lectured |
| | |
| Aspen Institute for Humanistic Studies<br>New York, New York | Developed programs and reports |
| | |

## RELATIONS WITH OTHER EMPLOYERS

| Description of Terms of Any Agreement or Arrangement | Parties | Date (Mo., Day, Yr.) |
|---|---|---|
| Pension plan (Harvard University staff retirement income plan). No future payments since I have resigned. Not vested at time of resignation. | Harvard University<br>Cambridge, MA | 10/81 to 5/20/83 |
| | | |
| | | |
| | | |

## HOWARD M. MESSNER

Senator STAFFORD. The next nominee that we mentioned earlier in our opening statement is Mr. Howard M. Messner, to be Assistant Administrator for Administration at EPA.

Mr. Messner, would you care to come forward?

Do you have members of your family here?

### STATEMENT OF HOWARD M. MESSNER, TO BE ASSISTANT ADMINISTRATOR FOR ADMINISTRATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. MESSNER. Yes, Mr. Chairman. Thank you. I have my son, David, here with me.

Senator STAFFORD. We would be glad to have him stand and be recognized.

Mr. MESSNER. Thank you, Mr. Chairman. Thank you and Senator Randolph for those kind words. It means a great deal to me, particularly with my son here. Thank you very much.

If the chairman approves, I would just summarize my statement and provide my prepared statement for the record.

Senator STAFFORD. I think that would be highly acceptable to the Chair and the rest of the committee. We will put your full statement in the record, as we have Mr. Alm's.

Mr. MESSNER. Thank you, Mr. Chairman and members of the committee.

Let me state at the outset that Bill Ruckelshaus, Al Alm, and I share a management philosophy and a common commitment to the Environmental Protection Agency. We believe in an open, consultative, and unbureaucratic work environment. We believe the work force at EPA, managers and employees, are among the finest in the Federal Government. They are very dedicated professionals. Given the opportunity and the leadership, they will put forth their best to achieve EPA's mission. Making a significant contribution to the workplace at EPA would be my highest personal goal as Assistant Administrator in charge of management. I know it is a difficult task.

I am keenly aware of the dynamic setting that is EPA, dealing with competing interests that are vital to the country's economic, social, and physical well-being, but I know that the people at EPA want to be productive and effective. If I am confirmed, it will be my job to provide the management tools to make their success possible. A quality work force, based on the best of the merit system, is at the top of my list.

I have several other overall goals which I would like to pursue, should the Senate confirm me, in the time that I have. They have their roots in my years of experience managing Federal programs.

One is to assure the Agency a sound, straightforward budgeting process that relates the resources which we request from the Congress to program results.

Another is to install the type of internal control systems that will make the President, the Congress, and the American people feel confident that our environmental programs are protected from fraud, waste, and abuse. I mean to make the Federal Managers' Fi-

nancial Integrity Act, which Congress passed last year, a standard for managerial performance in EPA.

I want to stabilize the Agency's internal organization and management systems. One of the Administrator's commitments to the President and the Congress was to restore a stable, effective, and harmonious working environment in EPA. I consider it a responsibility of mine to help Bill Ruckelshaus and Al Alm redeem that pledge. And, I don't think major disruptive reorganization exercises are needed to accomplish that objective. The Administrator also will be assigning me responsibility for the budget process as well as other administrative functions.

Finally, I want to instill an operating philosophy in the management staff of the EPA that I've always promoted wherever I was, and that is administration serves the programs.

Mr. Chairman, all that I've said reinforces one basic belief I've always held in promoting improved Federal management—the importance of the management team approach. No one individual, not even Bill Ruckelshaus, can single-handedly deliver EPA's products. All of us have to strive together to achieve the Agency's mission—administrators, program managers, the Inspector General, scientists, legal staffs, headquarters people, and field people. I want to make that management plan a reality in EPA.

Mr. Chairman, I would be very pleased to answer questions you might have or that other members of this committee might have.

Senator STAFFORD. Thank you very much, Mr. Messner. We are very glad your son is here.

Would you be willing to appear in front of any Senate or House committee that asked you to appear as a witness?

Mr. MESSNER. Yes, Mr. Chairman.

Senator STAFFORD. Do you know of any holdings that you have or positions that you hold that would place you in a conflict-of-interest position if you are confirmed?

Mr. MESSNER. None, Mr. Chairman.

Senator STAFFORD. Many people, including this Senator, are greatly concerned about reports of poor morale among employees of EPA, a high rate of attrition among the more competent and experienced senior people, and underutilization or misutilization of the senior people who have remained at the Agency.

What do you think is the extent of the problem, and what do you plan to do about it?

I might say, parenthetically, I think it has improved quite a lot in the past few months myself.

Mr. MESSNER. Thank you, Mr. Chairman. I think we see some initial signs that employees are responding very positively. As Al Alm indicated, we have involved the employees in constructive work on task forces that are deciding the future of our programs and improvements in the management of our programs.

I think the morale of the employees is a significant issue and one I expect to spend a great deal of my time on. I may seek help from people from outside EPA, where it is appropriate and where it is necessary; people who have had Government experience and have specialized in helping agencies overcome personnel problems.

I am very optimistic. As I said in my statement, the employees are outstanding and dedicated. I have never been disappointed in

my 23 years as a Federal employee in turning to other Federal employees for help.

With good open administration, involving employees in their own fate, and putting the mission of the Agency out front, I think we will be successful in solving any problems that may exist.

Senator STAFFORD. Thank you very much.

Let me ask you this: Do you intend to modify or recommend modifying the EPA budget in any way? Many of us have been concerned that it has been inadequate in the past 2½ years to carry out all of the purposes of the Agency. I do have in mind that the new Administrator in one area has commented that he thought the Superfund as it exists is inadequate to meet the demands upon it in the Nation.

Mr. MESSNER. Yes, Mr. Chairman. When Mr. Ruckelshaus first became Administrator of EPA, he proposed to the Congress an amendment of our 1984 appropriations, and you granted and the House granted a very generous $265 million in our operating and Superfund appropriations. That money which will be used next year and which we are trying to decide right now how best to use will be a tremendous shot in the arm for our programs.

We are in the process right now of building a base for a request of the Congress for 1985. The support that we receive from the President and the OMB in the amendment process makes us optimistic that adequate resources will be provided for our mission.

After sitting with Al Alm and Bill Ruckelshaus in some of these preliminary, internal budget hearings on the 1985 budget, I can say the employees are optimistic and encouraged, that they are facing up to very significant problems, and we will be back to talk to you about that again in the year to come, if you confirm me.

Senator STAFFORD. All right. I think this Senator, speaking individually, has been concerned about the adequacy of research and development and enforcement aspects of EPA's budget. That will be addressed in the new Administrator's submission for 1985.

Mr. MESSNER. Yes, Mr. Chairman.

Senator STAFFORD. Senator Randolph.

Senator RANDOLPH. Thank you, Mr. Chairman.

I am not sure if you had something to do with the consideration of the Civil Service Reform Act.

Mr. MESSNER. Yes, sir. I participated very heavily in the development of that act in the last administration. I was Assistant Director of the Office of Management and Budget, along with Allen Campbell of the Office of Personnel Management. I helped draft the legislative proposal.

Senator RANDOLPH. This is not important, but for the record, I chaired the Committee on Civil Service, which we once had in the House of Representatives. The committee names and duties have changed there as well as in this body. This was a concern even then that we had, and we handled some hearings on the subject matter that later was to surface.

Would you tell us, very frankly, do you have too many employees, too few, or the right number in EPA at the present time?

Mr. MESSNER. We have approximately 11,000 employees in EPA. As I have gone through the budget process, looking at the workload that exists today and the proposals before the Congress, programs

like RCRA, I would say that, one, we could utilize some of our employees much more effectively; two, we could make our employees more satisfied with their work by giving them more work to do; and, three, in an overall way I think the employees of EPA have struggled mightily to carry out a very complex set of agency statutory missions.

I have been in seven different Federal agencies in my 23 years of Federal service, and I do not know of any that compare to the complexity and the pressure of the Environmental Protection Agency.

Senator, I would think that my effort would be to get the best jobs out of the people that I work with, to create the environment where they can contribute fully, and to help the Administrator and Deputy Administrator assess whether we need more.

I was a great supporter of the Civil Service Reform Act. I still am. I think it is a courageous thing. I am proud to say that most of it was framed by career civil servants and approved by Congress. I have not in any way diminished my enthusiasm for a constructive civil service. In one way, I may be an example, in a humble way, as a product of that ambition to have career civil servants step forward at times of need when the country asks it of them. When Bill Ruckelshaus asked me to come back to EPA, I was Controller of the Energy Department and I felt honored to serve when the President chose to nominate me.

I am very proud to have spent the first part of my career in the career civil service, and I hope to spend the rest of it in support of civil service. That was made possible, in part, by the Civil Service Reform Act which you and other members helped us get. I an encouraged and very excited about it.

Senator RANDOLPH. Mr. Chairman, my colleagues, I think that statement can well be a part of the record often, and more often, frankly, in all the committees on which we may serve.

I was a student of the life of Winston Churchill. In fact, I authored the law which gave him honorary citizenship in the United States. I do not think that was wrong. He had some connections here.

I do want to make an observation. It may not be too pertinent. When he was the Prime Minister of Great Britain, he made this statement, "I am profoundly weary at the constant"—I may have to choose the right word a little later, but let's say "criticism" for the moment—"of the civil servants of Great Britain."

I do think sometimes we perhaps unwittingly, in an off-guarded moment, are inclined to be critical of the civil servant.

You are speaking of the building of the EPA with its complexity. We never presented, really, from Congress to any agency the maze of material that had to come to you.

I think we have to be very careful that we do not expect too much of the individuals, except when there is a man such as you who comes aboard. I think you understand the substance of EPA. You understand, at least partially or wholly, what we had as the vision of EPA, because it was that in part, not just the drafting of another law.

If the spirit which I think you manifest today is aboard a year from now, or what-not, come back and tell us about it.

Mr. MESSNER. Thank you, Senator.

Senator RANDOLPH. Thank you very much.

Senator STAFFORD. Thank you very much, Mr. Chairman emeritus.

The Chair is going to interrupt here just long enough to note that either we are unduly honored or things are very quiet over in the Senate.

We are pleased to have one of our long-time, most valued members of this committee, the Senate majority leader, Howard Baker, here this afternoon.

Howard, if you have any opening statement or comment on these nominations, we would be glad to hear from you.

Senator BAKER. You can see how long I've been away.

Senator STAFFORD. If you want to try another seat, go ahead.

Senator BAKER. Mr. Chairman, I do not at this time. Thank you.

Senator STAFFORD. Thank you. We are very glad you are here.

Senator Moynihan, do you have any questions of this witness?

Senator MOYNIHAN. I cannot forbear Senator Randolph's observation that Mr. Messner was much involved with the Civil Service Reform Act. I have a 19th century predecessor named Roscoe Conklin who was no friend of civil service, and I remember the observation he once made that when Dr. Johnson declared patriotism to be the last refuge of a scoundrel, he underestimated the potential of reform.

What do you have to say about that?

Mr. MESSNER. That is a very hard line to follow.

Senator MOYNIHAN. He made the mistake of resigning when President Garfield did not appoint his man to be collector of the Port of New York, and then Mr. Garfield made the mistake of getting shot, and that was the end of Mr. Conklin's career. He thought the Senate would promptly reappoint him, and it would be the beginning of civil service.

Not to ask a question, but may I just put forth a thought?

You are a recipient of the William A. Jump Memorial Award, which is, to a career civil servant, a very serious award.

Mr. MESSNER. Yes.

Senator MOYNIHAN. I congratulate you.

One of the questions this committee thinks about from time to time, and perhaps you would think about it and ask Mr. Alm to do so, too, is that there is no statutory basis for the Environmental Protection Agency.

Mr. MESSNER. That is true.

Senator MOYNIHAN. It is an Executive order issued under President Nixon's time. I helped draft a little bit of it.

We have to ask ourselves, "Do we want to make this a statutory agency?" No one would have better judgment on the matter than those of you trying to administer it as career officers.

It is such a very encouraging thing to see men such as yourself and Mr. Alm coming forward, as you say, and perhaps we will hear from you on this subject. Don't think of it as something that only we are thinking about. Perhaps you could help us do so. You may have some thoughts.

Mr. MESSNER. It is an interesting idea. There has never been an organic act for the Environmental Protection Agency. It was, as

you remember, put together by President Nixon as a reorganization plan.

Senator MOYNIHAN. Yes.

Mr. MESSNER. I think at that time, Senator, you were head of the Domestic Council.

Senator MOYNIHAN. I was counsel to the President.

Mr. MESSNER. Yes, sir. We will give it some thought. We are constantly looking at tools that we have to enforce the environmental rules and laws and provide a basis for improvement.

We have before the Congress a number of pieces of legislation that would add to our charter and our scope. It would be something worth thinking about. We will.

Senator MOYNIHAN. I am sure the chairman would welcome your counsel on this matter.

Thank you very much, and congratulations, too.

Senator STAFFORD. Thank you, Senator Moynihan.

At the appropriate time, if we can find a window, and I am sure we can, we will have a hearing in connection with your legislation.

Senator Randolph.

Senator RANDOLPH. It is a rather philosophical afternoon.

When you mentioned President Garfield, I did not serve with him but I was a student of Garfield.

I was reading some interesting material only last night about his days as the president of Hiram College, a college still in existence.

There was a young man wanting to cut some corners and get through quicker who made an appeal to the president, Mr. Garfield at that time. He replied, and this is documented, "Young man, it takes God 60, 70, even a century, to grow a great oak, but I'll tell you he can make a pumpkin in 30 days."

Well, it has not variant here.

Senator STAFFORD. In view of the seriousness of the afternoon, I am reminded of the occasion when President Garfield was called in the middle of the night by somebody in Boston who, having waked the President, then said to him over the phone, "Mr. President, I regret to have to tell you that the port collector of Boston passed away this evening, and I would like to take his place." The President's reply was, "If it is all right with the undertaker, it is all right with me."

Senator RANDOLPH. I hope that the majority leader will deal kindly with me in Senate matters, whatever they may be.

Was that story about the passing of somebody that you knew?

Senator STAFFORD. That was just before my time.

Senator RANDOLPH. You know Lincoln's mother was born in West Virginia. I always bring that out. He proclaimed us a State, and we are the only State that came into statehood in that way.

There was a man seeking a nomination from Lincoln for a judgeship. He wrote the proper letter saying that it was impossible to consider him because there was a sitting judge. However, this man kept constantly at the President. It is said that on a summer afternoon Lincoln was rocking in an easy chair on the south portico of the White House, looking out toward Virginia, the Potomac. The man got through the maze of aides, stood before him, and he said, "Mr. President, there's no reason now that you cannot nominate me to the judgeship." The President said, "I have been telling you

that I cannot consider you at this time." The man said, "Mr. President, you do not understand. There's been a boating accident on the Potomac River in the past hour, and the sitting judge was involved and he has been drowned." The President said, "Yes, I know that. I just nominated the man who shoved him in."

Senator STAFFORD. We really have to get down to work, but you remind me of the time Lincoln is said to have come down with smallpox, and then he brought in his personal secretary and said, "Now that I've got smallpox, call in all of the people who want a job because at last I've got something I can give them all."

Senator Domenici.

Senator DOMENICI. I have nothing to say.

Senator STAFFORD. Senator Baker.

This is going to be a memorable hearing for the young boy who is here. This is the first time, we would say to your son, in 3 years we have had an afternoon like this.

Senator BAKER. Don't you believe that.

Senator STAFFORD. Senator Baker.

Senator BAKER. I knew I had missed a lot by not being here, but I had forgotten how much.

Thank you, Mr. Chairman. I have an introduction to make when we reach the third nominee.

Senator STAFFORD. We are getting close.

Senator Simpson.

Senator SIMPSON. Mr. Chairman, I would not even attempt to enter this at this time. I have a lot of new material, though. Thank you.

Senator STAFFORD. The chairman, frankly, was hoping to induce you to let us hear some of your materials.

In any event, Mr. Messner, before we get into further trouble, as I said earlier, we will reserve the right for members to submit questions in writing. I seriously doubt if there will be any, but, should you get any, try to get them back to us in the form of answers tomorrow, because unless there is some technical reason or objection, we would like to try to act on your nomination on Wednesday.

Thank you very much.

Mr. MESSNER. Thank you, Mr. Chairman.

[Mr. Messner's prepared statement, résumé, and financial statement follow:]

# STATEMENT

# OF

# HOWARD M. MESSNER

# ASSISTANT ADMINISTRATOR-DESIGNATE

# ENVIRONMENTAL PROTECTION AGENCY

# BEFORE THE

# COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

# UNITED STATES SENATE

# AUGUST 1, 1983

23-034 O - 83 - 5

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you today in connection with the President's nomination of me to be an Assistant Administrator of EPA.

As a career civil servant for over 22 years, I feel particularly honored by the expression of confidence by the President and Administrator Ruckelshaus in asking me to assume leadership of the Agency's management and budget activities at this difficult point in EPA's history.

With your assent, I will be returning to an agency that has wonderful memories for me--a little older and I hope wiser. My first experience with the not-yet-created Environmental Protection Agency was as an OMB staff member assigned to help the then Ash Council develop the reorganization proposal for an environmental agency. When President Nixon's Reorganization Plan was approved by the Congress, I joined Bill Ruckelshaus to help organize the new agency and install its first administrative systems.

At the time, we designed--what I believe was--a dynamic organization; recruited talented people to staff it; and developed internal systems to support rapidly evolving programs.

I left EPA in 1975 to head the management programs at the new Congressional Budget Office; then returned to the Office of Management and Budget a few years later to

head the career management improvement staff. I was serving as Comptroller of the Department of Energy when Bill Ruckelshaus asked me to come back to EPA to help him restore the quality of management operations at the Agency.

Let me state at the outset that Bill Ruckelshaus, Al Alm, and I share a management philosophy and common commitment to the Agency. We believe in an open, consultative, and unbureaucratic work environment. We believe the work force at EPA--managers and employees--is one of the finest in the Federal Government. They are dedicated professionals. Given the opportunity and the leadership, they will put forth their best to achieve EPA's mission.

Making a significant, positive contribution to the work environment at EPA would be my highest personal goal as Assistant Administrator in charge of management. I recognize the difficulties I face. It won't be an easy task. I am keenly aware of the dynamic setting that is EPA--dealing with competing interests that are vital to the country's economic, social, and physical well being. But I know that the people at EPA want to be productive and effective. If I am confirmed, it will be my job--and I accept it--to provide the management tools to make their success possible. A quality work force based on the best of the merit system is at the top of my list.

I have several other overall goals that I'd like to pursue, should the Senate confirm me, in the time I have. They have their roots in my years of experience with managing Federal programs.

- One is to assure the Agency a sound, straightforward budget process that relates resource investments to program needs, program realities, and program results.
- Another is to install the type of internal control systems that will make the President, the Congress, and the American people feel confident that our environmental programs are protected from fraud, waste, and abuse. I mean to make the Federal Managers' Financial Integrity Act a standard for managerial performance in EPA.
- I want to stabilize the Agency's internal organization and management systems. One of the Administrator's commitments to the President, the Congress, and the EPA staff was to restore a stable, effective, and harmonious working environment in EPA. I consider it a responsibility of mine to help Bill Ruckelshaus redeem that pledge. And, I don't think major disruptive reorganization exercises are needed to accomplish that objective.
- Finally, I want to instill an operating philosophy in the management staff of the Agency that I've always promoted wherever I was--and that is--"Administration serves the Programs." It takes first class administration to

support a first class program. I want to provide that first class service.

The Administrator will be assigning me responsibility for the budget process as well as other administrative functions. That restores a unified management overview of the Agency that we had at the beginning, bringing together the administrative and resource management responsibilities of the Agency under a single Assistant Administrator.

We need well-coordinated budget, finance, personnel, management analysis, procurement, ADP and information systems, and administrative support operations. I have seen it work well in other agencies. It can work effectively in EPA.

Mr. Chairman, all that I've said reinforces one basic belief I've always held in promoting improved Federal management--the importance of the management team approach. No one individual, not even Bill Ruckelshaus, can single-handedly deliver EPA's product. All of us have to strive together to achieve the Agency's mission--administrators, program managers, the Inspector General, scientists, legal staffs, headquarters people, and regional people. I want to help make that a reality in EPA.

Mr. Chairman, I would be pleased to respond to any questions you or other members of the Committee may have.

Resume of

JUN 20 1983

HOWARD M. MESSNER

9653 White Acre Road, Apt. C-1
Columbia, Maryland 21045

202-382-4600 (Office) 301-730-2276 (Home)

EDUCATION

University of Massachusetts
Graduate School of Government
M.A. Degree, May 1962 (Carnegie Fellowship)

Antioch College
B.A. Degree, June 1960

EXPERIENCE

May 1983 - Present: Special Assistant to the Administrator for Management Improvement, U.S. Environmental Protection Agency. As Special Assistant to the Administrator, perform a variety of special assignments relating to the management of Agency programs with emphasis on communicating the Administrator's management philosophy to key staff, assisting the Administrator to define and formulate broad management goals and objectives, and responding to special demands of Agency key staff.

February 1983 - May 1983: Controller, U.S. Department of Energy. Major responsibilities included: Establishing, coordinating and maintaining an integrated system of budget, audit, accounting and cost control; interpreting and reporting on the financial results of operations and on the financial implications for the Department and the national economy of major actions and decisions. The primary accomplishment was overseeing the implementation of the Federal Managers Financial Integrity Act, which encourages strong internal controls and the prevention of waste and mismanagement.

April 1977 - February 1983: Assistant Director for Management Improvement and Evaluation, Office of Management and Budget. Major areas of activity included the design and development of improved government-wide administrative management systems and practices. Responsibilities included: (1) development of the President's management improvement program, (2) working with OMB and agency budget divisions to develop program evaluation activities, and (3) the administrative implementation of Presidential reorganization initiatives.

June 1975 - April 1977: Assistant Director for Management Programs, Congressional Budget Office. Responsibilities included program analysis in the general government area, such as those represented by the Civil Service Commision, General Services Administration, Department of Justice, Postal Service, Treasury

Department, and Federal regulatory agencies. Additional responsibilities included the internal management and administrative operations for personnel, budget and finance, contracting, and office services.

January 1971 - June 1975: Deputy Assistant Administrator for Administration, U.S. Environmental Protection Agency. Responsibilities included the direction and supervision of personnel management, facilities and support services, management and organization, management information and data systems, contracts management, grants administration, and security and inspection activities for the Agency.

November 1965 - January 1971: Management Analyst, Office of Management and Budget. Major areas of responsibility included Federal field organization, urban transportation, commerce and business activities generally, communications, and aspects of environmental health. Chaired the Environmental Protection Agency Task Force, and was the OMB Coordinator for D.C. Crime Programs.

June 1962 - November 1965: Staff Assistant to the Administrator, National Aeronautics and Space Administration. Assignments included budget analysis and preparation, management and organization analysis. Helped organize and operate the Executive Secretariat. Joined NASA as a Federal Management Intern.

September 1960 - June 1962: Analyst for the Commissioner of Administration and the Governor's Office in Massachusetts. Held a Carnegie Internship in State Government while attending the University of Massachusetts where I received an M.A. from the Graduate School of Government.

AWARDS

William A. Jump Memorial Award for distinguished service in public administration -- 1971

Exceptional Service Award from the Office of Management and Budget -- 1979

Elected member of the National Academy of Public Administration -- 1979

PERSONAL

Date of Birth: June 10, 1937

Place of Birth: Newark, New Jersey

Mr. Messner has three children by a previous marriage: Jennifer, 23; Linda, 19; and David 14.

United States of America
**Office of Government Ethics**

Office of Personnel Management
Washington, D.C. 20415

1983

Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Howard M. Messner, who has been nominated by President Reagan for the position of Assistant Administrator for Administration, Environmental Protection Agency.

We have reviewed the report and have also obtained advice from the Environmental Protection Agency concerning any possible conflict in light of the Agency's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Messner is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David R. Scott

David R. Scott
Acting Director

Enclosure

PERSONAL DISCLOSURE REPORT

JL

Form Approved OMB No. 3209-0001



Reporting Status (Check appropriate box)

☐ Incumbent ☑ New Entrant, Nominee, or Candidate ☐ Termination Report

**NOTE** All schedules must be filed. Enter "None" in areas or across schedules where appropriate.

| Agency Use Only | OGE Use Only |
|---|---|
| Date of Filing (Month, Day, Year) 6/8/83 | JUN 9 1983 |

| | Last Name | First Name and Middle Initial |
|---|---|---|
| Reporting Individual's Name | MESSNER | HOWARD M. |
| Position for Which Filing | Title of Position: ASSISTANT ADMINISTRATOR FOR ADMINISTRATION | Department or Agency (If Applicable): EPA |
| Location of Present Office | Address (Number, Street, City, State and Zip Code): DEPT. OF ENERGY 1000 INDEPENDENCE AVE. WASH. D.C. 20595 | Room Number: RM 7A145 |

Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.):

Termination Date (If Applicable) (Month, Day, Year):

Telephone No. (Include Area Code): 202-252-8004

**Presidential Nominees Subject to Senate Confirmation**

Name of Congressional Committee Considering Nomination: ENVIRONMENT, PUBLIC WORKS

Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No

**Positions Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)**

Title of Position(s) and Date(s) Held:
ASSISTANT DIRECTOR -- OMB (APRIL 1977 to Feb, 1983)
CONTROLLER, Dept. of Energy (Feb. to present)

**Certification**

I CERTIFY that the statements I have made on this report and all attached schedules are true, complete and correct to the best of my knowledge and belief.

Signature of Reporting Individual: Howard M. Messner

Date (Month, Day, Year): 5-27-83

**Agency Ethics Official's Opinion**

On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations.

Signature of Designated Agency Ethics Official/Reviewing Official: Lisabeth H. Glassman

Date (Month, Day, Year): 6/10/83

Office of Government Ethics Use Only

Signature: David A. Stott

Date (Month, Day, Year): 6/15/83

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

7-80 Edition of SF 278 is Usable

Do you have (alone) or dependent child (ren) ... Yes ... No ... give a beneficial interest in a trust? ... ✗

If "yes", have you reported the income from the trust? ...

If "yes", have you reported the assets of the trust? ...

If "yes", is this trust an "excepted" trust? ... Yes ... No ... or "qualified" trust? ...

... able in the case of certain reporting individuals

Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported? Yes ... No ✗

If "Yes", do you certify to all of the following?

1. They "represent solely your spouse's or dependent child's financial interest or responsibility;
2. They are not, in any way, past or present, derived from your income, assets, or activities;
3. You neither derive, nor expect to derive, any financial or economic benefit from them; and
4. You do not have knowledge as to the composition of such interest or liabilities. Yes ... No ...

Page Number ► 2 | Schedule A

Reporting Individual's Name: Messner, Howard M.

Agency Use Only

Date of Filing (Month, Day, Year)

| Identification | Income: Type of Income (✓) | | | | | | | Income: Category of Amount or Value (✓) | | | | | | | | | | Interests in Property: Valuation of Assets (✓) | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Dividends | Rent | Interest | Capital Gains | Partnership Income | Royalty Income | Other (Specify) | None (or less than $201) | $201 - $1,000 | $1,001 - $2,500 | $2,501 - $5,000 | $5,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $1,000,000 | Over $1,000,000 | Actual Amount | Date (Mo., Day, Yr.) | Valuation Method | $1,001 - $15,000 | $15,001 - $50,000 | $50,001 - $100,000 | $100,001 - $250,000 | Over $250,000 |
| Allis-Chalmers Corp | | | | | | | ✓ | ✓ | | | | | | | | | Only if "Other" Specified | Only if Honoraria | | | | | | |
| Government Investors Trust | | ✓ | | | | | | | ✓ | | | | | | | | | | H | ✓ | | | | |
| Budget Federal Credit Union | | ✓ | | | | | | | ✓ | | | | | | | | | | H | ✓ | | | | |
| | | | | | | | | | ✓ | | | | | | | | | | H | ✓ | | | | |

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## PURCHASES, SALES, AND EXCHANGES

This schedule is applicable only in the case of annual and termination reports.

Page Number ► 3 | Schedule B

Reporting Individual's Name: Messner, Howard M.

Agency Use Only

Date of Filing (Month, Day, Year)

Report Applicable Transactions, Even if Also Reported on Schedule A

| S or DC | Identification of Property (real and personal) | Type of Transaction: Purchase | Sale | Exchange | Date (Month, Day, Year): Purchase | Sale or Exchange | Category of Amount or Value (✓): $1,001 to $5,000 | $5,001 to $15,000 | $15,001 to $50,000 | $50,001 to $100,000 | $100,001 to $250,000 | Over $250,000 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Allis-Chalmers Corp | ✓ | | | 1-5-82 | | ✓ | | | | | |
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## SCHEDULE C. REIMBURSEMENTS

This schedule is applicable only in the case of annual and termination reports.

| Page Number | 4 | Schedule C |
|---|---|---|

Reporting Individual's Name: Messers Howard M

Agency Use Only

Date of Filing (Month, Day, Year)

I. Lodging, Transportation, Food and Entertainment—*List each source totaling $250 or more in value*

| S or DC | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | NONE | | |

II—All Other Gifts—*List each source totaling $100 or more in value*

| S or DC | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | NONE | | |

III. Reimbursements—*List each source totaling $250 or more in value*

| S | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | NONE | | |

(Part II of)

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Reporting Individual's Name: Messner, Howard M

Agency Use Only — Date of Filing (Month, Day, Year)

Page Number ➤ 5

Schedule D

## LIABILITIES

| S or DC | Name and Address of Creditor | Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term | Category of Amount or Value (✓) $10,001 to $15,000 | $15,001 to $50,000 | $50,001 to $100,000 | $100,001 to $250,000 | Over $250,000 |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | NONE | | | | | | |
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## POSITIONS HELD

| Name and Address of Organization | Type of Organization | Position Held | From (Mo., Yr.) | To (Mo., Yr.) |
|---|---|---|---|---|
| UNCOMPENSATED intermittent Advisor to three graduate schools of Public Administration: American University; George Washington Univ; and U.S. Agricultural School. | EDUCATIONAL INSTITUTIONS | advisor | 1980 | to present. |
| Vice President - American Consortium on International Public Administration | not-for-profit public service organization. | vice-president | 1982 | (to present) 1983 |

## COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

| Source (Name and Address) | Brief Description of Duties |
|---|---|
| | |
| NONE | |
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## RELATIONS WITH OTHER EMPLOYERS

| Description of Terms of Any Agreement or Arrangement | Parties | Date (Mo., Day, Yr.) |
|---|---|---|
| | | |
| NONE | | |
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## FREDERICK M. BERNTHAL

Senator STAFFORD. The final nominee in front of us this morning will be Fred Bernthal, as I mentioned, to be a member of the Nuclear Regulatory Commission. For the purpose of properly launching his appearance, the Chair would be very pleased to recognize the majority leader, Senator Baker.

### STATEMENT OF HON. HOWARD H. BAKER, JR., U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator BAKER. Mr. Chairman, I thank you very much. It is a pleasure, seriously, to be back with this committee. I began my career in the Senate attending the first committee session I ever attended in the U.S. Senate in this very room, when your predecessor, Senator Randolph, now the ranking minority member, was the distinguished chairman. With deference and respect to the present chairman, who is my friend and colleague and most avid supporter, I still think of Jennings Randolph as "Mr. Chairman." He served so extraordinarily well in that capacity for so long. For those of us who were fresh to the service of the Senate, he provided an opportunity for us to see a real professional at work.

You, Mr. Chairman, I count you as my strongest supporter in my several races for the leadership. Of course, there is a rule in the Senate that the majority or minority leaders cannot also be the chairman of a committee. Since I am senior to you on this committee, you are sure, therefore, that I will never challenge you in that position.

Senator STAFFORD. That has entered my mind several times.

Senator BAKER. Of course, I would not, in any event.

I am delighted to be here and to have this opportunity to present to you a man who has served on my staff faithfully and well for some years now, who has been nominated by the President of the United States to be a member of the Nuclear Regulatory Commission. Dr. Frederick Bernthal, on my right, is a man of unique, special qualifications. He has served as scientific adviser, as policy analyst, as a general legislative assistant in my office for more than 4 years. In doing so, he has gained the respect and confidence of Members of the Senate and the executive departments on both technical and legislative matters.

He has, in my opinion, displayed a rare agility for effectively combining distinguished research skills and persuasive political skills.

Fred came to my staff from Michigan State where he had been an associate professor of physics and chemistry. I assigned him responsibility for all nuclear energy matters, and I asked him to follow legislation concerning defense research and development, scientific research and development, and all of the energy and technology related issues that come before the Congress.

Mr. Chairman, you will remember, as Senator Randolph will remember, as, indeed, will Senator Simpson as chairman of the subcommittee, that after the incident at Three Mile Island I asked Fred Bernthal, with your consent, to travel to that site and report back his findings and his insights and his impressions. It is from Fred Bernthal that I first, by telephone, had some idea about how

serious that accident was and what the immediate threat could be and how appropriate the response the Government of the United States and the Commonwealth of Pennsylvania was under those circumstances.

I may say for Fred that, in the face of that tension-filled period, he discharged that obligation skillfully and with an equanimity and a calm that speak not only of his great ability, but also the balance that is so necessary in this complex society of ours.

His insights and his contributions to deliberations of the subcommittee, and ultimately of the entire committee, and the writing of the report on Three Mile Island were of substantial value.

Mr. Chairman, he has closely followed the economic developments that have brought this effective hiatus in the development of nuclear power, brought about in the wake of Three Mile Island, and the reduction in the demand for electricity, largely as a result, I believe, of conservation and a declining level of economic activity in this country.

I have valued his advice and his insights in every instance, and it is of no small note of regret and concern that I agreed that the President might submit Fred Bernthal's name as a nominee for the Nuclear Regulatory Commission. Good men are hard to find. Fred Bernthal is a good man.

He has served me well. He will serve the Commission well, and he will serve the country well, if this committee of the Congress and the Senate confirm him.

His preparation for service, Mr. Chairman, on the Regulatory Commission is excellent. He earned his Ph. D. at the University of California in nuclear chemistry. He did advanced study at Yale and the Niels Bohr Institute in Copenhagen. He has lectured extensively in this country, and in Europe, and Japan. He has carried out collaborative research with nuclear scientists at Oak Ridge, Brookhaven, Los Alamos, Lawrence Livermore, and the Argonne National Laboratories.

He is a resident of Tennessee now, Mr. Chairman. He established his residence there at Oak Ridge, Tenn. He is my main representative in that community of very capable and very energetic scientists and engineers. I regret his moving on to another position for that reason, as well.

Mr. Chairman, understanding these regrets, I believe the President chose wisely. I believe the committee will find that Dr. Bernthal is eminently qualified for this job. If he is confirmed, I will lose him with regret, but I will observe his service on that Commission with great pride.

It is my pleasure, Mr. Chairman, to offer you this gentleman as the nominee as a member of the Nuclear Regulatory Commission. I offer you my wholehearted support of this nomination.

Senator STAFFORD. Thank you very much, Senator Baker. Your recommendation certainly will carry weight with this committee. We appreciate your being here. We will be very happy if you can stay, but the committee will understand if duties on the floor of the Senate require you to be elsewhere.

Senator BAKER. Mr. Chairman, I do appreciate that. In all seriousness, I do need to return to the floor. When I left, it was growing increasingly likely that we were not going to be able to reach

the agriculture target price bill, and a motion to proceed with this is now pending. It is my intention to ask the Senate instead to turn to the interior appropriation bill. We may not be able to do that, either, but I would like to try. I will return and try to preside over the warring factions while you minister in a tender way, I am sure, to this nominee.

Senator STAFFORD. Mr. Bernthal, we would be very happy at this time to receive any statement you wish to make in summary form or in full statement form. If you do it in summary form, your entire statement will appear in the record.

## STATEMENT OF FREDERICK M. BERNTHAL, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION

Dr. BERNTHAL. Thank you, Mr. Chairman.

I will give a summary of my statement.

It is a pleasure and an honor for me to appear before you and the members of this committee today. The President has nominated me to be a member of the Nuclear Regulatory Commission. Should the Senate consent to my appointment, I look forward eagerly to the challenge of this new area of public service.

I would especially like to thank Senator Baker, the senior Senator from my adopted State of Tennessee, for taking the time out to introduce me here today.

It has been about 5 years since I joined his staff as a walk on. I have learned a great deal in those 5 years and much that I believe will serve me well as a member of the commission.

As a scientist by training, it has been a special pleasure for me to serve a member of this body who is himself an enthusiastic scientist by avocation.

Mr. Chairman, I would like briefly to offer some biographical highlights that are especially relevant for the committee to use in evaluating my credentials as a prospective member of the Commission.

At the University of California I earned my doctorate in the field of nuclear chemistry, itself a quaint contradiction in terms. My studies dealt with fundamental research physics, but, more to the point, in the process I accrued 4 years' experience in the safe handling and use of radioactive materials. I have continued diminished activities in research up to the present time.

From 1970 to 1980, I have been a professor of chemistry and physics at Michigan State, as you heard. While on the Michigan State faculty, I lectured in both chemistry and physics, taught a number of laboratories designed to introduce students to the understanding and safe handling of radioactivity, and directed graduate research in nuclear physics.

For 5 years I was a member of the university reactor safety committee and the university radioisotopes committee.

Mr. Chairman, I am a scientist. As such, I believe in research and the opportunity that research offers to reduce facts to objective measurement and numbers, whenever that is possible. At the same time, 20 years of training and research have profoundly sensitized me to the uncertainties and errors that attach to numbers and measurements.

There are those on the Commission, and certainly those before me in this room today, who have a far more detailed understanding of the laws and regulations that apply to the work and mission of the NRC. I still have much to learn of those matters, but more than any special knowledge I may possess or lack, I would hope to bring to the Commission a perspective and an approach that will assist the Congress and the Commission in carrying out their responsibilities to the people of this country.

I wish to state unequivocally for the record that I believe the prime objective of the Nuclear Regulatory Commission is the protection of public health and safety. Many of the problems that the Commission continues to face will greatly influence the building of public confidence in the Commission as holders of the public trust to insure the safe utilization of atomic energy and nuclear material. I believe that confidence will only be established by a long, reliable, and consistent record of safety brought about by an effective program of regulation.

The issues facing the Commission range from complex and difficult matters of regulatory principle, Mr. Chairman, to some matters that ought to be rather simple in solution.

Of a more substantive nature, there is an almost familiar litany now of issues that the Commission must address, and I want to just outline a few of those briefly.

The Nuclear Regulation Subcommittee of this committee has already taken testimony and begun consideration on some matters of immediate urgency and long-range importance to an orderly regulatory process. The question of emergency planning and the capability and participation of responsible Federal, State, local, and utility parties in meeting any emergency at a nuclear powerplant site will come before the Commission again this fall.

Plans for certain changes in the procedures of the NRC have recently been sent to the Congress as regulatory reform legislation. While I have not reached definitive conclusions in respect to the implications of that legislation, I would hope to be able to speak more clearly on that subject with the benefit of at least some enlightenment while sitting on the Commission itself.

Few issues have been so constant a source of public concern as the development of a safe and credible procedure for disposing of the waste products from production of nuclear energy. The NRC, in cooperation with other responsible Federal agencies, will have a growing responsibility to see that the provisions of this legislation are carried out consistent with the Commission's trusteeship of the public health and safety.

A number of specific issues relate to the construction of nuclear powerplants. These include quality assurance, employee and management accreditation, and, of a more general nature, certain remaining unresolved safety issues. I would hope and expect, not too naively, I trust, that all of these issues can be addressed quickly and aggressively in the short term, so that both public and industry confidence can be secured for the longer term.

Mr. Chairman and distinguished members of the committee, I believe that nuclear power is an essential ingredient in this country's energy future. It is an energy option that is potentially inexhaustible and which we cannot afford to discard. In the decade of the

23-034 O - 83 - 6

eighties, a period thus far marked by hiatus in new powerplant orders, I believe we must plan our time wisely to prepare for the challenges that will surely confront us in the 1990's. I would welcome the opportunity to help us meet that challenge, if the Senate will confirm me.

I would be happy to answer any questions that you may have.

Senator STAFFORD. Thank you very much, Dr. Bernthal.

Would you be willing, to appear in front of any committee of the House or the Senate as a witness if requested?

Dr. BERNTHAL. Certainly, Mr. Chairman.

Senator STAFFORD. Do you own any property or have any current connections or responsibilities that would place you in a conflict-of-interest position if you are confirmed to the Commission?

Dr. BERNTHAL. I have some small holdings, Mr. Chairman, in utilities, which I have agreed to dispose of, as required, in 30 days, should I be confirmed.

Senator STAFFORD. Very good.

The Atomic Energy Act requires the Nuclear Regulatory Commission to report to Congress by August 1, 1983, which incidentally is today, of course, with its views on whether Price-Anderson should be continued or modified. Although I understand the report may be a bit late, and it is probably still too soon for you to have an opportunity to contribute significantly to its recommendations, do you have any views on Price-Anderson which you would care to share with the committee today?

Dr. BERNTHAL. Mr. Chairman, I understand that the report will be late. I believe that a draft copy of that report has been circulated somewhat already. I have not seen a copy of the report yet.

I would just say that it has been close to 30 years, I guess, since the Price-Anderson policy was established. I would certainly be able to look at the provisions of the Price-Anderson Act with some question as to whether an adjustment at this time might be necessary, whether it is for inflationary or other factors.

Senator STAFFORD. Do you have any views on whether or not the Clinch River program should be continued?

Dr. BERNTHAL. Mr. Chairman, as you know, I had certain responsibilities for that program as Senator Baker's staff person. It is not, however, the responsibility of the Commission to deal with policy matters in respect to the Clinch River project. The job of the Commission is regulatory. I must say at one point, shortly after the 1980 election, I expected that I would be spending far more time concerning myself with the safe construction of that plant than I had been as Senator Baker's staff person up to that point.

I have considered the problem very carefully, of course. From a personal standpoint, I believe the Clinch River breeder reactor is a worthwhile project for this country, but that no longer will be my principal responsibility as a member of the Commission.

Senator STAFFORD. Finally, under current law, the Nuclear Regulatory Commission is charged with the responsibility for reviewing and approving applications to export certain nuclear fuel and materials. Should this function, in your judgment, be retained in the Commission?

Dr. BERNTHAL. Mr. Chairman, I have not entirely crystallized my views on that point. Again, I would go back to my comment that

the prime mission, it seems to me, of the Nuclear Regulatory Commission is the public health and safe protection of public health and safety. There is also a charge, of course, for the protection of the common defense.

On the other hand, any of the activities that relate to export policy particularly, as opposed to providing technical advice, do not now, as a matter of fact, consume a great deal of the Commission's time. However, to the extent that they detract from the principal objective, the regulation of the civilian nuclear power enterprise and regulation of nuclear materials, I would want to look very carefully whether I feel the Commission should be heavily involved in that kind of process.

Senator STAFFORD. Thank you, Dr. Bernthal.

Senator Randolph.

Senator RANDOLPH. I am going to take only a moment because I think it is important that we recognize Al Simpson. He is, of course, chairman of our Subcommittee on Nuclear Regulation.

I will ask, Mr. Chairman, that my statement on Dr. Bernthal appear in the record.

Senator STAFFORD. Certainly. Without objection, we will place it in the record. (See p. 26.)

Senator RANDOLPH. You do as you feel best.

There is just one question that has nothing to do with the issue of nuclear power. I am talking about coal versus nuclear.

You said that, in essence, nuclear is going to be with us; isn't that right?

Dr. BERNTHAL. Yes.

Senator RANDOLPH. That is what you said. You said, also, in other words, that we do in a constructive way, as you would want to do, would be an effective investment; is that correct?

Dr. BERNTHAL. Yes, Senator, that is a fair characterization.

Senator RANDOLPH. Now with all of the development, and I watch carefully, as do you and others, there is a pressing need, as I see it, for an effective, demonstrated emergency evacuation plan. I think it is hit and miss right now. I think it has many holes in it.

Would you want to comment about when an accident happens and what we have seen unravel at Three Mile Island or wherever it may be?

Dr. BERNTHAL. Senator, the Congress has spoken very clearly on the need for effective emergency evacuation planning and the ability to implement those plans in the event that there should be a nuclear emergency. As you know, there are a number of particular cases at issue right now, and I must say that, as you also know, Senator Simpson has introduced legislation that deals with the question of emergency planning. I have had the opportunity to sit in on some of those meetings, some of the hearing process, and I experience a certain sense of frustration over the current situation.

I have not made up my mind, incidentally, on exactly what legislative measures would be appropriate. The Commission actually has fairly broad authority right now in respect to emergency planning. Whether legislation is needed beyond that authority, I would want to reserve judgment on that until I get a chance to look at things more from the other side of the fence.

Senator RANDOLPH. I thank you for your response.

Mr. Chairman, I have to go to my office, but I think it is very important that we proceed with what I believe to be the matter of bringing these appointments from this committee to the Senate. I know you will attempt to do that as far as possible.

Senator STAFFORD. Yes, Senator Randolph. As I said at the outset, it would be the Chair's intent, the committee agreeing, and in view of your concurrence I believe it will, that we handle all three nominations, plus five small watersheds, plus naming two buildings, one for Charles Holleck and one for Phillip Burton, who in each case qualify under our rules, on Wednesday morning. I would hope that members would plan to assist the chairman in getting a quorum long enough to get those matters which are not controversial accomplished as soon after 10 as possible.

Senator RANDOLPH. I will cooperate.

Senator DOMENICI. When did you want to do that, Mr. Chairman?

Senator STAFFORD. Wednesday morning at 10.

Senator Domenici, you are the next here. Do you have any questions?

Senator DOMENICI. No, I don't. I am pleased with all three nominees. I look forward to voting for all three of them.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you.

Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, I have had a good, long talk with Dr. Bernthal this morning, and I do not need to detain the committee on the matter. I just, perhaps, would raise two points that we discussed.

In your testimony you referred to the 1980's as a period of a hiatus with the issuance of new licenses. That word "hiatus," as I understand it, suggests an interval between two relatively similar periods. It suggests in your mind that we had been issuing these licenses and someday we will be issuing them again?

Dr. BERNTHAL. Yes, Senator.

Senator MOYNIHAN. I think it is of large relevance to this committee and to your commission that we are not doing so now. If there was a prospect, it is for more difficulty rather than less, and it is located in the matter that Senator Randolph dealt with, which was the preparation of radiological emergency response, evacuation plans.

As you know, there are 53 sites in the country, and 17 have plans. If they do not get them, they close.

Can I take it that you share the concern, which is not uniformly to be found in this committee but I think it is generally—do you accept the proposition that the Federal Government produced atomic energy; sponsored its use as public power, as electricity; licensed the reactors; and then imposed an evacuation scheme? It has some responsibility to see that it is possible to abide by its rules?

Dr. BERNTHAL. Yes, Senator; as we discussed earlier, I certainly agree that the Federal Government clearly must assume a key role. In fact, the Commission, in concert with the Federal Emergency Management Agency, has the authority now to do that.

Senator MOYNIHAN. I, as you know, have a bill in. I do not know how many there are like it, but it is not a very complicated thought, which is to provide, in essence, the Commission the power to levy a fee on reactors for a fund that will be used to develop such plans. What if the reactors close down?

You, I take it, share our concern.

Dr. BERNTHAL. I certainly do, Senator.

Senator MOYNIHAN. The other thing I would just like to mention to the chairman and my colleagues is that Dr. Bernthal and I had a good discussion of this whole question of operator training and licensing. That is something that we paid too much attention to the front of these machines and not enough to the back end. We found ourselves with a waste problem.

They were developed by men of espritic genes. It was just assumed that not anybody could run them.

As you said, at Northwestern, was it there that you taught——

Dr. BERNTHAL. Michigan State University.

Senator MOYNIHAN. Michigan State. I am sorry. It was the practice of the faculty to make the faculty and the students operate those reactors. Don't bring anyone else in. You do it. It is your health and safety. You have to understand this machine. It is not just something left to others or to assume it will be done by somebody.

I think we really do have to ask ourselves, do we have the level of training and education in these matters at this time, given the responsibility of those operators? I take it you share that?

Dr. BERNTHAL. I agree, Senator. Anything that can be done, I think, to lend toward the real as well as the public understanding of professionalization, as I would call it, of the operating corps for reactors, and development of the esprit that ought to accompany that group of people, I think is good.

Senator MOYNIHAN. I appreciate very much your thoughts on this. We will appreciate your thoughts on this as you embark on this newest aspect of your career, on which I join with everyone here, I am sure, in congratulating you.

Senator STAFFORD. Thank you very much, Senator Moynihan.

Senator Simpson.

Senator SIMPSON. Mr. Chairman, I want to join in welcoming Dr. Bernthal here today, upon his nomination. Indeed, he certainly requires no further introduction from me. Therefore, I would submit the full text of my very brief statement into the record. (See p. 26.)

I would just say that, indeed, I have had some extraordinary opportunities to work with him, the first one suddenly being in the helicopter with Senator Hart headed for Three Mile Island. I shall not forget that day. I had been in this body for less than 3 months. That was an educational experience. I think there was a good result from that. A large part of that came from the staffs of this committee and the subcommittee staff working together without any partisan bickering, and Dr. Bernthal right there in the picture. I think that staff report was one of the finest that was prepared under Gary Hart's chairmanship. I was very proud to sign it as ranking minority member.

A large part of that work, a great deal of the coordination, came from Fred. I came to know him well as he dealt with these contro-

versial and emotional-laden issues that we always seem to address here. He has done that in a very reasoned and balanced and objective fashion.

He has been of particular assistance to me since I arrived in the Senate and assumed my responsibilities, for which you, sir, give me free and full rein and responsibility as chairman of the subcommittee, as Senator Randolph did before.

I have come to respect his judgment and his opinions. I will look forward to a very productive working relationship as he assumes this very important responsibility as a Commissioner of the NRC.

I would add only one further note, Mr. Chairman. He was born in Sheridan, Wyo., and I wanted Senator Randolph to hear that. It is not the impact of Abe Lincoln being born in West Virginia, mind you, but, nevertheless, we are very proud of him.

I have just a couple questions.

Your agenda, as you know, when you hit the Commission, is full, and it will be so as you deal with emergency planning, and Senator Moynihan has discussed that. He has a situation in his State which is grievous. I hope to address that, not in a hearing way but just in an ability to perceive exactly what is there, and we will do that without any attempt at fanfare, just needing to visit with those persons in a very serious way about serious problems, such as licensing and nuclear regulatory reform, whether we are implementing this Nuclear Waste Policy Act that we worked so hard on. There is Price-Anderson coming up in 1984, where we have to address that. These are just a few of the issues that are very heavy upon us and of great interest to this committee, the chairman, and to myself as chairman of the subcommittee.

I would ask you just one or two questions.

We began our hearings in April on the subject of emergency planning at commercial, nuclear powerplants. While we discovered that the system we established in 1980 is, in general, functioning as we intended, we also discovered that in some instances States and counties, not just the ones that have been mentioned here, have come to use their own authorities and powers as municipal agencies, political subdivisions, for purposes which were not quite anticipated when Congress passed the emergency planning legislation in 1980. We have seen that has caused some distress.

If, upon reviewing this issue, you were to come to agree with that assessment, could you be prepared as a member of the Commission to try to guide the Commission toward utilizing their administrative flexibility, which is already on the books, which the Commission already has, hoping they might address those problems in that way?

Dr. BERNTHAL. Yes, Senator Simpson. In fact, I might just say in a broader context that, to the extent that the Commission will be asked to give its opinions on legislation that is proposed here, I believe that Congress should be careful about providing strictures on the administrative flexibility that the Commission has to address issues. Sometimes those things, when first provided, seem to address the problem exactly as the problem exists, and then a few years down the road it comes before you in a different way and it doesn't work so well.

As you point out, the Commission right now does have a great deal of authority and leeway to address the emergency evacuation problem in a number of different ways.

Senator SIMPSON. I have found in the hearings over the course of my time that the administrative procedure network or effort within the NRC is awesome and complicated and arcane, and it really is. I mean that.

They have formed unto themselves some of the Administrative Procedures Act, and it is very vexatious. Even members of the Commission will state that.

I do think that a lot of the authority is there, if they would move, but they seem frozen in place in many ways, the hearing process, and these are the things that we are addressing, always keeping in mind the public health and safety, which is the sole mission.

I have just one other question. Currently, we have this authority under the negotiations and the final product with our authorization bill to issue temporary operating licenses prior to public hearing. What are your views on that authority? If presented, would you support an extension? If you found it justified, would you support an extension of the Commission's current authority in that area?

Dr. BERNTHAL. Once again, Senator, yes, to answer directly. I would support an extension of the Commission's authority to act, and I again emphasize "authority to act," should the Commission feel that that is an appropriate thing to do.

Again, to the extent that I have been able to look at the existing authority that they do have, there is a good deal of flexibility already in the way that the Commission could address the question of temporary operating licenses.

I know that public participation has been a concern on the part of certain parties, and some members of this committee. Once again, there is existing authority to permit public participation in the process of addressing temporary operating licenses.

Senator SIMPSON. You have had a lot to do with a lot of legislative responsibility. I have seen that. In fact, there is not anything that you will face on the Commission that you haven't dealt with legislatively in some way. That is my feeling.

I guess I want to be certain, or at least feel secure, that, regardless of your responsibilities for legislative activities in the Senate, you, indeed, would not recuse yourself from those issues, those hot ones, that bounce now in a new court for you. Are you prepared to consider all of those issues that may come before you as a commissioner relating to the difficult ones that will come up? You will deal with those on the merits, will you, as they are presented to the Commission? That would be my hope. Would that be your view?

Dr. BERNTHAL. Yes, Senator, that is certainly my intention.

Senator SIMPSON. Without exception?

Dr. BERNTHAL. Without exception.

I would only make the comment that I have consulted with counsel in respect to the Clinch River breeder activity and the licensing of that breeder, and my responsibilities as a staff person for Senator Baker. Not that I have been advised that there is any legal dif-

ficulty on that particular question, but I would want to make a decision at some point whether there may be an appropriateness of appearance that might require that I would decide to recuse myself on the question of the construction permit on that particular issue. That would be the only exception I might make.

Senator SIMPSON. You will determine that at the time?

Dr. BERNTHAL. I will determine that at the time, yes.

Senator SIMPSON. I have no further questions, Mr. Chairman.

Senator Hart has certain questions and advised me that he will submit those in writing.

I thank you, Mr. Chairman.

Senator STAFFORD. Thank you very much, Senator Simpson.

I hope those questions can be submitted and the responses can be obtained fast enough so that we can go ahead with the confirmation hearing on Wednesday at 10, which is the Chair's hope and proposal.

Senator Humphrey.

Senator HUMPHREY. Thank you, Mr. Chairman.

Let me touch upon this matter of Clinch River, Mr. Bernthal. You are undecided at this point, from your answer to Senator Simpson, but, nevertheless, express some concern about doubts that might be cast on your objectivity on this subject, since you have been an avowed partisan of the project.

I am glad you have doubts about participating in a decision on that for the reason that I have just stated. It is obvious that you have been a partisan. Despite whatever best attempts you might make, you would, in my view, give the appearance of lack of objectivity—the appearance—to participate in a decision on licensing or a construction permit. I do not know what the precedent is in situations such as this on this committee, but I believe that you ought to say in advance that you would recuse yourself in that particular instance.

Dr. BERNTHAL. Senator, as I understand it, as I said before, there is clearly no legal obligation, I believe. I have consulted with counsel on that.

Senator HUMPHREY. Yes. That is what I am talking about, appearance.

Dr. BERNTHAL. It is a question of appearance.

I would hope that on matters that involve the public health and safety it is not the job of the Commission to be involved in matters that deal with policy. The question of whether the Clinch River breeder reactor should be built or not be built is no longer my responsibility, frankly, as a member of the Commission. Rather, my responsibility is, if it is built, can it be built safely.

I would want to determine whether there would be any unreasonable question of appearance when that time approaches, but certainly not at the last minute.

Senator HUMPHREY. What will be your criteria for making that decision? If you are unable to make it now, what additional elements must be realized before you can make that decision?

Dr. BERNTHAL. Senator, I suppose, for one thing, I would just say, again, my responsibility has been a matter of policy. When I join the Commission, if confirmed by the Senate, I really will be looking at an entirely different set of issues, the issues that involve public

health and safety. I would hope that I would be able to make an objective evaluation of the safety questions as they relate to the Clinch River breeder reactor, independent of what my policy responsibilities have been as a staff person in the U.S. Senate.

Senator HUMPHREY. Well, that is true. You will not be dealing with policy, but rather with specific aspects. However, it was you, yourself, who a moment ago raised this issue about appearances and confessed very straightforwardly that you had some doubts about whether you should participate in any decisions on this particular project, and said that you would make up your mind at some point after your confirmation.

Therefore, I am asking what additional considerations are involved here before you must make up your mind, before you can make up your mind.

Dr. BERNTHAL. The principal consideration would be informing myself, Senator Humphrey, on those issues that, frankly, I am not informed on right now, to the extent I would be required to be as a Commissioner. Those are the public health and safety factors.

I would hope that I would be given the benefit of the time to study those issues and view the larger subject, rather than viewing only the subject as I have seen it thus far as a member of the staff.

Senator HUMPHREY. Again, I fail—and I do not mean to take too much of the committee's time—I fail to see the relevance of technicalities to the question of whether or not it is proper for you to participate in the decision on Clinch River, when you have been an avowed partisan of that project.

It is a question of appearances, and I do not see how that can be resolved by addressing technical details of the project.

Dr. BERNTHAL. Senator, I had certain staff responsibilities to carry out here. I am sure you understand that. I carried those out to the best of my ability. I may be perceived as an avowed partisan of the Clinch River project——

Senator HUMPHREY. Yes.

Dr. BERNTHAL [continuing]. But, again, I would draw the distinction between my former responsibilities and my new responsibilities, and that distinction is in my mind very clear. I would hope you appreciate that I do make that distinction in my own mind.

Senator HUMPHREY. Well, you have your responsibilities and we have ours. I am trying to discharge mine now. Honestly, it does not seem as though you are directly answering my question.

You raised the issue that it is a matter of possible appearance of impropriety, and that you would make up your mind about recusing yourself on this issue at some unstated point after your confirmation. What I am asking is why you cannot make up your mind now and tell us, because I think it is important to the matter of your confirmation.

Dr. BERNTHAL. Senator, the question was not one, I think, of impropriety. In all candor, I have discussed this some with legal counsel at the Commission. It is not a question of impropriety. It is a question of whether there might be reason to believe, as we approach the point, for example—and it could come as late as June of 1984, I am told—of the issuance of a construction permit. That is a matter of appearance and public perception, not a question of impropriety, I think, at any point of my involvement either as a staff

member here or as a commissioner responsible for public health and safety.

Senator HUMPHREY. I certainly do not mean to suggest that you have been improper in any way, but I am worried about the appearance of inobjectivity in the Commission's decision, when one of the Commissioners is ruling on a highly controversial matter in which he has been a highly visible partisan.

You said at some point that you are going to have to make a decision about this. I am asking when that point will arrive and how you will know when you are there.

Dr. BERNTHAL. It certainly would not come before, Senator, I have had a chance to look at the record in respect to the safety issues that confront the project from the standpoint of the Commission.

I believe that I am capable of separating those issues from the question of policy, which is not the responsibility of a commissioner, frankly.

I could imagine that I might be particularly useful, in fact, in taking a careful look at the question of safety in licensing with respect to Clinch River.

Senator HUMPHREY. I must say, with all due respect, that unless I am particularly dense today that you are not really answering my question, but I am not going to persist because you know how things work around here, and you are apparently prepared to burn up as much time as necessary to avoid answering. I have other things to do.

Let me ask you a few more questions on a few more matters.

Are you prepared to say now what you feel about the exporting of modern thermoreactor components and technology to the People's Republic of China?

Dr. BERNTHAL. Senator, no, I really am not prepared to comment on that in detail. I have not had a chance to study exactly what our overtures might have been or our interest might be in providing for exports of materials to the People's Republic of China. That is simply an issue that I would want to look at carefully when I get down there and develop a clearer perspective on that. I would be happy to address that issue at a later time.

Senator HUMPHREY. All right. What about in a more generic sense? What are your views on U.S. policy—what are your views on nonproliferation, the issue of nonproliferation?

Dr. BERNTHAL. In the broad sense, I have rather strong views on proliferation. I think that anyone that is realistic and that has taught, as I have, the effects of nuclear weapons and the dangers of nuclear weapons has to have a strong view that we should do all that we can to prevent the wide-scale dispersion of that technology, of the ability to manufacture nuclear weapons, to other countries.

Senator HUMPHREY. Good. I certainly applaud that point of view because I share it myself. We all like to hear our own point of view reflected, I think. I guess that is enough said on that subject.

Then what about the export of reactor components or of any technology to India, which is clearly—I do not know if they are signatory or not, but in any case they have clearly abused our help in the past. That is a matter on which you will have to make a deci-

sion, or will you? I do not know. Does that come before the Commission?

Dr. BERNTHAL. The Commission consults with the State Department, Senator. As I understand it, finally, it does require the approval of the Commission for export of materials.

Senator HUMPHREY. Would you, then, as a commissioner approve or disapprove the export, or the provision by any means, of nuclear technology and components to nonsignatories of the treaty?

Dr. BERNTHAL. Senator, again, I do not mean to sound evasive, but I have not studied the record of the Indian case, on the materials specifically that we wish to export to them now, and I think it would be inappropriate for me at this point to suggest exactly how I might vote on such a question if it comes before the Commission.

I am aware that the Senate has addressed the question of exports to India before and that the situation has changed somewhat now with respect to the legislative veto decision recently by the Supreme Court. However, on the specific question of how I would treat that as a commissioner, I really would want to take a careful look at the materials involved and apply the Commission's special expertise and the expertise of the staff, learn about what they have to say, before I would make a statement.

Senator HUMPHREY. Mr. Bernthal, you are not exactly an uninformed person on the matter of nuclear technology. I would assume, likewise, that you are highly informed on the matter of foreign relations. So you know what is going on in India, do you not? Do you approve of that with respect to our assistance in the past?

Dr. BERNTHAL. Senator, I certainly do not approve of any situation that provides nuclear weapons to another country. As I understand it, and I am not an expert on the foreign policy aspect of this, it has not been clear, I believe, exactly what the intentions of the Indian Government are. I have not studied that question carefully, however, and the Commission's judgment is, in any case, in consultation with the State Department on those matters. To some extent, I guess I reflect my feeling that perhaps the Commission should serve as an adviser to the State Department to a large extent on these matters, particularly as they relate to making technical evaluations, rather than advising on any questions that relate to policy.

Senator HUMPHREY. Apart from what you would like to see, under statute what is the NRC responsibility today with regard to the export of nuclear equipment and materials? It is not just an advisory responsibility, is it, or is it purely an advisory responsibility?

Dr. BERNTHAL. No; it is not purely advisory, as things stand today. The NRC, in fact, does have—there is a requirement that the NRC must sign off on the export of such materials.

Senator HUMPHREY. Yes. That is the way it stands today. Until that is changed, are you prepared to vote against the export of nuclear equipment and materials to nonsignatory countries?

Dr. BERNTHAL. Senator, if I felt that the record indicated that such exports, certainly if they would violate the law as it stands, and, second, if I felt that such exports would be a significant risk in

the question of proliferation, I certainly would be prepared to vote against exports of that type.

Senator HUMPHREY. In setting up conditions, then, you also imply that under some conditions you would be prepared to support the export of nuclear materials and equipment to nonsignatory countries.

Dr. BERNTHAL. That would require, though, clearly a careful look at exactly what those materials are. I could imagine cases, where I would not favor such exports. It is a hypothetical question.

Senator HUMPHREY. Yes, it is, but an important hypothetical question.

Dr. BERNTHAL. It certainly is. I agree.

Senator HUMPHREY. These bombs going off in India are not terribly hypothetical, as I understand it.

I would have hoped that you would say that you are opposed to the export of these materials and technologies to nonsignatory countries, at the very least. You are not prepared to say that flatly?

Dr. BERNTHAL. Senator, without looking at exactly what is planned here and looking at the record, I think it is inappropriate for me to say how I would vote on a specific issue of that type. I would just make the general statement, obviously, that, if anything, the fact that a given country is a nonsignatory is somewhat prejudicial to its case, but I would not care to state exactly how I would vote on this particular instance or any other one until I have had a chance to look at the record.

Senator HUMPHREY. I think that is an important criterion for a Senator making up his mind about this nomination. We always want to give the President the benefit of the doubt, but this is a very important question, and I have not found your answer to be reassuring, to say the least.

I know that nominees are told to keep their exposure to a minimum, and perhaps you have been coached that way. I would urge you to be more explicit, if you feel like being more explicit, but that is entirely up to you.

Dr. BERNTHAL. Senator, the only instruction that I have received generally is that it is not wise—and, in fact, would be quite unwise—for me to comment on specific issues that might come before the Commission that I would be voting on without having had a chance to look at the record on those issues.

Senator HUMPHREY. It is funny—I thought that line was reserved for Supreme Court nominees. Now everybody is using it. How are we supposed to make a judgment? OK. I give up. Thank you very much.

Dr. BERNTHAL. If I may say so, I would just say that I have very strong feelings about the question of proliferation and our support in general of the international effort. In fact, I think this administration's policy has been stated very clearly on the question of nonproliferation. I have strong feelings that we ought to be supporting in every way possible the international effort to stop the spread of nuclear weapons and to do what we can to prevent this nuclear club from expanding any further than it already has.

Senator HUMPHREY. Well, just one last try: the Commission is an independent commission, is it not?

Dr. BERNTHAL. That is right, sir.

Senator HUMPHREY. Then, presumably, the Commission will not be taking instructions, will listen to opinions but will not be taking instructions from any particular administration. Therefore, you will be an independent commissioner, and you are allowed to have independent ideas. I am wondering what independent ideas you are bringing to this independent Commission. You are not being very clear about it. Maybe your ideas are not clear.

Dr. BERNTHAL. My ideas are very clear on the question of proliferation, if that is the question that you are asking. I would be happy to elaborate on other issues if you care to raise them.

Senator HUMPHREY. Still, you said a few moments ago—or certainly strongly implied—that under some conditions you would be willing to approve the export of these materials to nonsignatory countries. I cannot find that acceptable.

Senator STAFFORD. Thank you very much, Senator Humphrey.

Senator HUMPHREY. Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Dr. Bernthal.

I understand the questions that are directed to you are available now. I would again recommend that you have them in tomorrow, if you can, so that we can proceed at 10 o'clock on Wednesday, which will be the next meeting of the full committee, to consider the several items I mentioned earlier.

In the meantime, the committee stands adjourned.

[Whereupon, at 4:05 p.m. the committee adjourned to reconvene at the call of the Chair.]

[Mr. Bernthal's prepared statement, résumé, financial statement, and responses to written questions follow:]

Statement of

FREDERICK M. BERNTHAL

before the

Senate Committee on Environment and Public Works

August 1, 1983

Thank you Mr. Chairman. It is a pleasure and an honor for me to appear before you and the members of the Committee today. As you know, the President has nominated me to be a member of the Nuclear Regulatory Commission. Should the Senate consent to my appointment, I look forward eagerly to the challenge of this new area of public service.

I would like especially to thank Senator Baker, the Senior Senator from my adoptive state of Tennessee, for taking time out from his duties as Majority Leader to introduce me here today. It has been almost five years since I joined his staff as a "walk-on". I have learned a great deal in those five years, and much that I believe will serve me well as a member of the Commission. As a scientist by training, it has been a special pleasure for me to serve a Member of this body who is himself an enthusiastic scientist by avocation.

Mr. Chairman, I would like briefly to offer some additional biographical highlights that are especially relevant for the Committee to use in evaluating my credentials as a prospective member of the Nuclear Regulatory Commission. My undergraduate degree from Valparaiso University was in chemistry, and then I went on to study at the University of California at Berkeley, where I earned a doctorate in the field of nuclear chemistry, a quaint contradiction in terms. My studies dealt with fundamental research in nuclear structure physics, but more to the point, in the process I accrued four years experience in the safe handling and use of radioactive materials.

I have continued diminished activities in research up to the present. Since 1970 I was a professor of chemistry and physics at Michigan State University, a position which I formally resigned shortly after the 1980 elections, following two years leave of absence. While on the Michigan State faculty, I lectured in chemistry and physics, taught a number of laboratories designed to introduce students to the understanding and safe handling of radioactivity, and directed graduate research in nuclear physics. For five years I was a member of the University Reactor Safety Committee and the University Radioisotopes Committee. In the past 15 years, I have engaged in collaborative research with nuclear scientists from a number of foreign countries, but especially Denmark, Germany, Canada, and the United Kingdom. It has therefore been easy for me, and a matter of personal interest, to keep abreast of the thinking of the scientific community with respect to issues surrounding nuclear power programs in other countries.

Since 1978, as legislative assistant to Senator Baker, I have had a variety of responsibilities, including those that relate to his membership on the Subcommittee on Nuclear Regulation. My activities in that capacity are familiar to Members of this body. I shall not further detail them, except to recall that I first had the pleasure of working with the distinguished Senator from my native state of Wyoming, the Chairman of the Subcommittee of jurisdiction, in the dubious circumstance of a visit to an island in the middle of the Susquehanna River in Pennsylvania.

Mr. Chairman, I am a scientist. As such I believe in research, and the opportunity that research offers to reduce facts to objective measurement and numbers, whenever that is possible. At the same time, 20 years of training and research have profoundly sensitized me to the uncertainties and errors that attach to numbers and measurements. There are those on the Commission, and certainly before me in this room today, who have a far more detailed

understanding of the laws and regulations that apply to the work and mission of the NRC. I still have much to learn of those matters, but more than any special knowledge I may posess or lack, I would hope to bring to the Commission a perspective and approach that will assist the Congress and the Commission in carrying out their respective responsibilities to the people of this country.

I wish to state unequivocally for the record that I believe the prime objective of the Nuclear Regulatory Commission is the protection of public health and safety. Many of the problems that the Commission continues to face will greatly influence the building of public confidence in the Commission as holders of the public trust to ensure the safe utilization of atomic energy and nuclear materials. I believe such confidence will only be established by a long, reliable, and consistent record of safety, brought by an effective program of regulation.

There is an almost familiar litany of major issues that the Commission must address. I would like briefly to mention a few of those that continue to be key to the Commission's agenda.

The Subcommittee has already taken testimony and begun consideration on two matters of immediate urgency and long range importance to an orderly regulatory process. The question of emergency planning and the capability and participation of responsible federal, state, local, and utility parties in meeting any emergency at a nuclear powerplant site will come before the Commission again this fall. It is essential that the Commission develop an equitable, consistent, and sensible procedure for completing emergency planning and insuring preparedness, so that public safety is not at risk in the event of a nuclear accident.

Plans for certain changes in the procedures of the NRC have recently been sent to the Congress as regulatory reform legislation. While I have not yet reached definitive conclusions in respect to the implications of the proposals put forth in the two versions of that legislation, I would hope to be able to speak more clearly on that subject with the benefit of at least some short period of enlightenment on the Commission itself. Whatever legislation the Congress might ultimately enact, careful thought should be given to preserving the flexibility of the Commission to deal with nuclear powerplant licensing in the most predictable and efficient way, while always providing for meaningful public participation in the licensing process.

In the closing hours of the 97th Congress, legislation was finally enacted which sets a timetable and policy for the intermediate and long-term disposal of nuclear waste. Few issues have been so constant a source of public concern as the development of a safe and credible procedure for disposing of the waste products from production of nuclear energy. The NRC, in cooperation with other responsible federal agencies, will have a growing responsibility to see that the provisions of this legislation are carried out in a way that satisfies that public concern, and is consistent with the Commission's trusteeship of public health and safety.

23-034 O - 83 - 7

A number of specific issues relate to the construction of nuclear power plants. These include quality assurance, employee and management accreditation, and of a more generic nature, certain remaining unresolved safety issues. I would hope and expect, not too naively I trust, that all of these issues can be addressed quickly and aggressively in the short term, so that both public and industry confidence can be secured for the longer term.

Mr. Chairman, at the risk of raising the question of why another voice on the Commission should even be necessary, I wish to note that the Commission already is an extraordinarily capable group of individuals, of diverse, but in every case germane credentials. Collectively, it possesses credentials of leadership in the field of nuclear powerplant design and safety engineering; recognized, published scholarship on issues involving nuclear non-proliferation and safeguards; distinguished business and management experience; knowledge in metallurgy, stress mechanics, and specialty steel fabrication; and leading expertise on the laws and regulations that govern the Commission and the nuclear enterprises it is charged to oversee. I look forward with anticipation to working with this college of Commissioners if I am confirmed by the Senate.

Mr. Chairman and distinguised Members of the Committee, I believe that nuclear power is an essential ingredient in our country's energy future. It is an energy option that is potentially inexhaustible, and which we cannot afford to discard. In the decade of the 80's, a period thus far marked by hiatus in new powerplant orders, I believe we must plan our time wisely to prepare for the challenges that will surely confront us in the 1990's. I would welcome the opportunity to help us meet that challenge.

Curriculum Vitae of F. M. Bernthal

I. PERSONAL INFORMATION

Name: Frederick M. Bernthal

Present Address: 3001 Veazey Terrace, Apt. 930
Washington, DC 20008

Birth Date: January 10, 1943

Health: Excellent

II. EDUCATION

| | |
|---|---|
| Valparaiso (Indiana) University | B.S. 1964 |
| University of California, Berkeley | Ph.D. 1969 |
| Yale University | Advanced Study, 1969-70 |
| Niels Bohr Institute, University of Copenhagen | Advanced Study, 1976-77 |

III. PROFESSIONAL EMPLOYMENT HISTORY

Chief Legislative Assistant, 1980-date; Legislative Assistant, 1978-79
U.S. Senator Howard Baker, Washington, D.C. Responsibilities:

- Represent the Majority Leader and Senator from Tennessee to senior officers of the Executive Branch, U.S. Senate Committees, National Laboratories, and business and industry, especially in matters of technical, scientific, and energy interest.
- Supervisory responsibilities for Sen. Baker's legislative staff and liaison between staff and Majority Leader's Office.
- Scientific advisor, policy analyst, and legislative assistant to Sen. Baker; special oversight responsibility for contracts and programs incident to the Oak Ridge complex, and other major R&D and production facilities in Tennessee.
- Facilitate flow of legislation on floor of Senate, in cooperation with senior legislative staff of other Senators and the Counsel to the Majority Leader.

Associate Professor of Chemistry and Physics, 1975-77; Assistant Professor 1970-75; Michigan State University, East Lansing

- Supervised postdoctoral, graduate, and undergraduate research as group leader at Cyclotron Laboratory; directed research leading to one M.S. and four Ph.D. degrees; independent research at Michigan State produced some 35 publications in scientific journals.

- Research performed under contract awarded in response to proposals submitted to the National Science Foundation and the Department of Energy.

- Taught undergraduate and graduate courses in chemistry and nuclear physics; class size from 8 to 500 students.

Visiting Scientist; Niels Bohr Institute, University of Copenhagen, 1976-77

Carried out research in nuclear structure physics; research supported in part by NATO Senior Scientist Fellowship; joint research carried out at Gesselschaft für Schwerionenforschung (GSI) in Darmstadt and at the Kernforschungsanlage (KFA) in Jülich, Germany. Lectures and seminars given in East and West Germany, Poland, and Japan.

Staff Postdoctoral Scientist, Yale University, 1969-70

Research at the Yale Heavy Ion Accelerator Laboratory and at the Wright Nuclear Structure Laboratory.

Graduate Research Assistant, Lawrence Berkeley Laboratory, 1965-69

Research leading to the Ph.D. degree in nuclear chemistry and nuclear structure physics under direction of Prof. John O. Rasmussen and in experimental group led by Dr. Jack Hollander and Prof. David Shirley.

Research Aide, Argonne National Laboratory, Summer 1964

IV. AWARDS

NATO Senior Scientist Fellowship, 1977

Congressional Science Fellowship, American Physical Society, 1978-79

V. TRAVEL

Lectures, seminars, and other professional activity in Denmark, France, East and West Germany, Poland, United Kingdom, Greece, Israel, Switzerland, Belgium, The Netherlands, Sweden, and Japan.

Joint research and publications with scientists in West Germany, Denmark, United Kingdom, France, Poland, Israel, and Brazil.

## VI. OTHER PROFESSIONAL ACTIVITIES

- Selection Committees for Congressional Science Fellows for the American Physical Society and the American Association for the Advancement of Science

- Four years experience as principal liaison for Sen. Baker with Oak Ridge National Laboratory and associated facilities, the Tennessee Valley Authority, State of Tennessee, industry, and other laboratories and educational institutions across the country in identifying and promoting R&D policy directions and obtaining support, both political and financial, to meet those objectives.

- Principal responsibility for Sen. Baker for aspects of national nuclear energy program planning and policy, especially as related to nuclear regulation, uranium enrichment, the breeder reactor, and nuclear waste.

- Experience in assisting municipal and industrial leaders seeking to obtain support for construction of synthetic fuels and fossil fuels facilities, with involvement ranging from broad policy analysis to financial analysis incident to capitalizing projects.

- Some fifty invited lectures, colloquia, delivered papers, and talks to motivate and entertain given in the U.S., Europe, Japan, and Tennessee; subject matter including nuclear physics research, the future and prospects for nuclear fission and fusion power, federal R&D policy, Senate perspective on energy and R&D legislation, and the role of the majority leader in the U.S. Senate.

- Served as referee for scientific papers submitted for publication in *Physical Review*, *Physical Review Letters*, and *Nuclear Physics*, and for research proposals submitted to the National Science Foundation.

## VII. PUBLICATIONS

Over 40 publications in refereed professional scientific journals, primarily in *Phyical Review C*, *Nuclear Physics*, *Physical Review Letters*, and *Physics Letters*. Representative recent publications:

Evidence for Hexadecapole Vibrations in A=170 Deformed Nuclei; New Results for $^{168}$Yb
P. M. Walker, J. L. S. Carvalho, and F. M. Bernthal
Phys. Lett. 116B (1982) 393.

$^{194,196,198}$Pt($p,p'$) Reactions at 35 MeV
P. T. Deason, C. H. King, R. M. Ronningen, T. L. Khoo, F. M. Bernthal, and J. A. Nolen, Jr.
Phys. Rev. C 23 (1981) 1414.

VIII. PROFESSIONAL SOCIETIES

American Physical Society
Sigma Xi Scientific Research Society
Pi Delta Epsilon Journalism Fraternity
American Chemical Society
The John M. Clayton Society

IX. PERSONAL INTERESTS

Music, writing, skiing, tennis, photography

X. REFERENCES

Will supply names of references on request.

## BIOGRAPHICAL SKETCH AND EMPLOYMENT HISTORY

F. M. Bernthal

Fred M. Bernthal was born in Sheridan, Wyoming on January 10, 1943. In 1949 he moved to Wayne, Nebraska, where he attended primary and secondary school. He received the B. S. degree in chemistry, with distinction, in 1964 from Valparaiso (Indiana) University. In his terminal year there, he received the President's Award, and as student body president was chief administrative officer for all student activities and publications.

In the summer of 1964, he was an employee of the Argonne National Laboratory, and that fall he went on to graduate school at the University of California at Berkeley. He was employed there first as a teaching assistant, and then as research assistant until completing his Ph.D. degree in nuclear chemistry in 1969. During that period, he began a career of basic research in nuclear physics which has continued to the present time. In February of 1969, he accepted an appointment to the research staff of Yale University, where for 18 months he continued his research activity.

In September, 1970 he was appointed Assistant Professor of Chemistry and Physics at Michigan State University, and in 1975 he was promoted to Associate Professor and granted tenure. He took a sabbatical leave in the 1976-77 academic year for research and advanced study at the Niels Bohr Institute of Copenhagen University, and was awarded a NATO Senior Scientist Fellowship that year.

As a professor at Michigan State, Dr. Bernthal led a research group of graduate and postdoctoral students, and was responsible for obtaining funding to support that research. Four students obtained Ph.D. degrees under his tutelage, and one an M.S. degree. In addition to his teaching duties, he lectured to numerous groups on the subject of fission and fusion energy prospects and problems. During his sabbatical year in Denmark, he traveled to Japan, Israel, Poland, East and West Germany, Greece, and the United Kingdon, lecturing frequently, and carrying out research in Germany and Denmark.

Bernthal returned to Michigan State for the 1977-78 academic year, and in 1978 he was named Congressional Science Fellow of the American Physical Society. He joined the staff of Senator Howard Baker that year as Legislative Assistant for energy, science, and technology issues. Since then he has held lead staff responsibility for legislative matters within the jurisdiction of the Senate Committees on Energy and Natural Resources; Nuclear Regulation Subcommittee of Environment and Public Works; Science Technology and Space Subcommittee of the Commerce Committee, and the research and development function of the Armed Services Committee.

During the period of Senator Baker's campaign for the Presidential Nomination in 1979 and 1980, Dr. Bernthal developed policy and position papers on energy and technology issues. He took leaves to assist in the brief campaign in Oklahoma and New Hampshire, and was pricipal organizer of the effort in Manchester, N.H. He has also collaborated with staff of the Republican Policy Committee in developing Party positions on energy issues.

In April of 1980, Bernthal assumed duties as Chief Legislative Assistant to Senator Baker, with supervisory responsibility for the Senator's legislative staff, while retaining his previous responsibilities in technical and energy-related areas. In December of 1980 he resigned from the faculty of Michigan State University.

Since that time, Bernthal has assisted the Majority Leader in liaison with Senate Committees and Administration departments and agencies, while continuing as Chief Legislative Assistant.

Bernthal is a member of the American Physical Society, the American Chemical Society, and the Scientific Research Society of Sigma Xi. The author of more than 40 scientific publications, he has lectured extensively in the U.S. and abroad.

United States of America
**Office of Government Ethics**

Office of Personnel Management
Washington, D.C. 20415

JUL 27 1983

Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Frederick M. Bernthal, who has been nominated by President Reagan for the position of Commissioner of the United States Nuclear Regulatory Commission.

We have reviewed the report and have also obtained advice from the Nuclear Regulatory Commission concerning any possible conflict in light of the Commission's functions and the nominee's proposed duties. Mr. Bernthal has agreed to dispose of his holdings in Detroit Edison and Toledo Edison within 30 days after he begins service as a Commissioner in accordance with the requirements of the Commission.

Based on the foregoing, we believe that Mr. Bernthal will be in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin by JAS

David H. Martin
Director

Enclosure

SF 278 (Rev. 8-81)
FPM Chapter 734
U.S. Office of Personnel Management

# FINANCIAL DISCLOSURE REPORT

DR

Form Approved
OMB No. 3209-0002



| Reporting Status (Check Appropriate Box) | | | NOTE | Agency Use Only | OGE Use Only |
|---|---|---|---|---|---|
| ☐ Incumbent | ☒ New Entrant, Nominee, or Candidate | ☐ Termination Report | All schedules must be filed. Enter "None" in areas or across schedules where appropriate | Date of Filing (Month, Day, Year) JUN 13 1983 | JUN 28 [illegible] |

| | Last Name | First Name and Middle Initial | | |
|---|---|---|---|---|
| Reporting Individual's Name | Bernthal | Frederick M. | | |
| Position for Which Filing | Title of Position | Department or Agency (If Applicable) | Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.) | Termination Date (If Applicable) (Month, Day, Year) |
| | Commissioner | U.S. Nuclear Regulatory Commission | June 1, 1983 | |
| Location of Present Office | Address (Number, Street, City, State and Zip Code) | | Room Number | Telephone No. (Include Area Code) |
| | c/o Senator Howard Baker, U.S. Senate, Washington, DC 20510 | | SH-522 | (202) 224-9678 |

| Presidential Nominees Subject to Senate Confirmation | Name of Congressional Committee Considering Nomination | Do You Intend to Create a Qualified Diversified Trust? | |
|---|---|---|---|
| | Senate Committee on Environment and Public Works | ☐ Yes | ☒ No |

| Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above) | Title of Position(s), and Date(s) Held |
|---|---|
| | Chief Legislative Assistant to Senator Howard Baker |

| Certification | Signature of Reporting Individual | Date (Month, Day, Year) |
|---|---|---|
| I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief. | Frederick Bernthal | June 1, 1983 |

| Agency Ethics Official's Opinion | Signature of Designated Agency Ethics Official/Reviewing Official | Date (Month, Day, Year) |
|---|---|---|
| The information contained in this report discloses no conflict of interest under applicable laws and regulations. | Herzel H.E. Plaine, General Counsel | June 21, 1983 |
| Office of Government Ethics Use Only | Signature | Date (Month, Day, Year) |
| | David H. Martin by HS | 7/26/83 |

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

See 6/21/83 letter from Herzel H.E. Plaine to David Scott, OGE, concerning divestiture of security holdings in Toledo Edison and Detroit Edison and possible recusal from Commission matters worked on while employed on the staff of Senator Howard Baker

(Check box if comments are continued on the reverse side) ☐

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(Rev. 6/81)

## INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

| | Yes | No |
|---|---|---|
| Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust? | | X |
| If "yes", have you reported the income from the trust? | | |
| If "yes", have you reported the assets of the trust? | | |
| If "yes", is this trust an "excepted" trust? ... or "qualified" trust? | | |

| | Yes | No |
|---|---|---|
| Are there any interests in property, ... sales, or exchanges, or liabilities of a spouse or dependent child which ... have not reported? | | X |

If "Yes," do you certify to all of the ...?
1. They represent solely your spouse's ... dependent child's financial interest or responsibility;
2. They are not, in any way, ... derived from your income, assets, or activities;
3. You neither derive, nor expect to derive, any financial or economic benefit from them; and
4. You do not have knowledge of the ... composition of such interest or liabilities.

| | Yes | No |
|---|---|---|
| | | |

Page Number 2 — Schedule A

Reporting Individual's Name: Frederick H. Bernthal

Agency Use Only

Date of Filing (Month, Day, Year): JUN 13 1983

| Spouse (S) or Dependent Child (DC) | Identification | Type of Income ( ✓ ) | | | | | | | | Category of Amount or Value ( ✓ ) | | | | | | | | Interests in Property: Valuation of Assets ( ✓ ) | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Pre-tax | Rent | Non-cpl | Capital Gains | Earned Only | Earned & Unearned | Other Sources | $1-200 / $201+ | (X) | $1,001-$2,500 | $2,501-$5,000 | $5,001-$15,000 | $15,001-$50,000 | $50,001-$100,000 | $100,001-$1,000,000 | Over $1,000,000 | Actual Amount | Date (Mo., Day, Yr.) | Valuation Method | $1,001-$5,000 | $5,001-$15,000 | $15,001-$50,000 | $50,001-$100,000 | $100,001-$1,000,000 | Over $1,000,000 |
| | State Mutual Securities Common | X | | | | | | | X | | | | | | | | | | | E | X | | | | | |
| | Amerada Hess Common | X | | | | | | | X | | | | | | | | | | | E | X | | | | | |
| | Signal Co. Common | X | | | | | | | X | | | | | | | | | | | E | | X | | | | |
| | Dreyfuss Liquid Assets Money Fnd. | X | | | | | | | X | | | | | | | | | | | H | X | | | | | |
| | First Variable Rate Money Fund | X | | | | | | | X | | | | | | | | | | | H | X | | | | | |
| | Toledo Edison preferred | X | | | | | | | X | | | | | | | | | | | E | X | | | | | |
| | Detroit Edison common | X | | | | | | | X | | | | | | | | | | | E | X | | | | | |
| | condo rent, 56 Valley Forge, Oak Ridge, Tenn. | | X | | | | | | | X | | | | | | | | | | G | | X | | | | |
| | 2nd trust note, former residence 957 Bedford, E. Lansing, Mich. | | | X | | | | | | | X | | | | | | | | | G | | | X | | | |
| | E.F. Hutton Cash Reserve Money Fund | X | | | | | | | X | | | | | | | | | | | H | X | | | | | |
| | Pan American World Airways | X | | | | | | X | | | | | | | | | | | | E | X | | | | | |
| | Caesers World | X | | | | | | X | | | | | | | | | | | | E | X | | | | | |
| | Bally Manufacturing | X | | | | | | X | | | | | | | | | | | | E | X | | | | | |
| | Storer Communications | X | | | | | | X | | | | | | | | | | | | E | X | | | | | |

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(Rev. 6/81)

# INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

| | Yes | No |
|---|---|---|
| Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust? | | |
| If "yes", have you reported the income from the trust? | | |
| If "yes", have you reported the assets of the trust? | | |
| If "yes", is this trust an "excepted" trust? ( ) or "qualified" trust? | | |

| | Yes | No |
|---|---|---|
| Are there any interests in property, purchases, sales, or exchanges, or liabilities of a spouse or dependent child which you have not reported? | | |
| If "Yes," do you certify to all of the following?<br>1. They represent solely your spouse's or dependent child's financial interest or responsibility;<br>2. They are not, in any way, past or present, derived from your income, assets, or activities;<br>3. You neither derive, nor expect to derive, any financial or economic benefit from them; and<br>4. You do not have knowledge as to the composition of such interest or liabilities. | | |

| Page Number | 3 | Schedule A |
|---|---|---|

Reporting Individual's Name: Frederick M Bernthal

Agency Use Only

Date of Filing (Month, Day, Year): JAN 13 1982

| Spouse (S) or Dependent Child (DC) | Identification | Income: Type of Income | | | | | | | Income: Category of Amount or Value | | | | | | | | | Interests in Property: Valuation of Assets | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Dividends | Rent | Interest | Capital Gains | Farming/Trust | Royalty/Trust | Other (Specify) | None (or less than $101) | $101-$1,000 | $1,001-$2,500 | $2,501-$5,000 | $5,001-$15,000 | $15,001-$50,000 | $50,001-$100,000 | Over $100,000 | Actual Amount Only if "Other" Specified | Date (Mo., Day, Yr.) Only if Applicable | Valuation Method | $1,001-$5,000 | $5,001-$15,000 | $15,001-$50,000 | $50,001-$100,000 | $100,001-$250,000 | Over $250,000 |
| | Genex common | | | | X | | | | | X | | | | | | | | | E | X | | | | | |
| | Mark Controls common | | | | X | | | | | X | | | | | | | | | E | X | | | | | |
| | Sippican common | | | | X | | | | | X | | | | | | | | | E | X | | | | | |
| | Barry Wright common | | | | X | | | | | X | | | | | | | | | E | X | | | | | |
| | Dentsply common | X | | | X | | | | | | X | | | | | | | | E | X | | | | | |
| | Wackenhut common | | | | X | | | | | X | | | | | | | | | E | X | | | | | |
| | Eastern Gas Fuel common | X | | | X | | | | X | | | | | | | | | | E | X | | | | | |

SF 278—Financial Disclosure Report
(Rev. 6/91)

## PURCHASES, SALES, AND EXCHANGES

**This schedule is applicable only in the case of annual and termination reports.**

| Page Number | 4 | Schedule B |
|---|---|---|

Reporting Individual's Name: Frederick M Bernthal

Agency Use Only

Date of Filing (Month, Day, Year): MAY 13 1993

Report Applicable Transactions, Even if Also Reported on Schedule A

| S or DC | Identification of Property (real and personal) | Type of Transaction | | | Date (Month, Day, Year) | | Category of Amount or Value ( ) | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Purchase | Sale | Exchange | Purchase | Sale or Exchange | $1,001 to $5,000 | $5,001 to $15,000 | $15,001 to $50,000 | $50,001 to $100,000 | $100,001 to $250,000 | Over $250,000 |
| | not applicable | | | | | | | | | | | |
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SF 278—Financial Disclosure Report
(Rev. 6-91)

# GIFTS AND REIMBURSEMENTS

This schedule is applicable only in the case of annual and termination reports.

| Page Number | 5 | Schedule C |
|---|---|---|
| Reporting Individual's Name: Frederick M. Bernthal | | |
| Agency Use Only | | |
| Date of Filing (Month, Day, Year): JUN 13 1983 | | |

I. Lodging, Transportation, Food and Entertainment—*List each source totaling $250 or more in value*

| S or DC | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | Not applicable | | |
| | | | |
| | | | |
| | | | |
| | | | |

II—All Other Gifts—*List each source totaling $100 or more in value*

| S or DC | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | N | | |
| | | | |
| | | | |
| | | | |
| | | | |

III. Reimbursements—*List each source totaling $250 or more in value*

| S | Source (Name and Address) | Brief Description | Value |
|---|---|---|---|
| | N | | |
| | | | |
| | | | |
| | | | |
| | | | |

SF 278—Financial Disclosure Report
(Rev. 6/81)

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

| Reporting Individual's Name | Agency Use Only | Page Number | | Schedule |
|---|---|---|---|---|
| Frederick M. Bernthal | Date of Filing (Month, Day, Year) June 1, 1983 | | 6 | D |

## LIABILITIES

| S or DC | Name and Address of Creditor | Type of Liability (e.g., promissory note, margin account) Give date, interest rate and, if applicable, term | Category of Amount or Value ( ✓ ) $10,001 to $15,000 | $15,001 to $50,000 | $50,001 to $100,000 | $100,001 to $250,000 | Over $250,000 |
|---|---|---|---|---|---|---|---|
| | Michigan National Bank, Lansing, Michigan | 7½% mortgage loan on former residence at 957 Bedford, E. Lansing, Mich. secured under land contract sale 25-year note dated February, 1972, due 1997 | | X | | | |
| | Blount National Bank, Maryville, Tenn. | 13½% mortgage loan on legal residence at 56 Valley Forge, Oak Ridge, Tenn. secured by property 25-year note due 2008 (1983) | | X | | | |

JUN 13 1983

## POSITIONS HELD

| Name and Address of Organization | Type of Organization | Position Held | From (Mo., Yr.) | To (Mo., Yr.) |
|---|---|---|---|---|
| none | | | | |
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## COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants.

| Source (Name and Address) | Brief Description of Duties |
|---|---|
| none | |
| | |
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| | |

## RELATIONS WITH OTHER EMPLOYERS

| Description of Terms of Any Agreement or Arrangement | Parties | Date (Mo., Day, Yr.) |
|---|---|---|
| none | | |
| | | |
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 21, 1983

Mr. David R. Scott
Acting Director
Office of Government Ethics
Office of Personnel Management
Washington, DC 20415

Dear Mr. Scott:

I have reviewed the Financial Disclosure Report (Form 278) of Frederick M. Bernthal and have discussed the report with him. On the basis of the information disclosed in the report, his financial interests present no conflict of interest, with one exception. Under the Commission's regulations, which prohibit security holdings by NRC employees in the major entities involved in the commercial nuclear field, Mr. Bernthal will be required to dispose of his holdings in Toledo Edison and Detroit Edison within thirty days after he begins his NRC employment. 10 CFR § 0.735-29. He has agreed to do so.

I also note that Mr. Bernthal worked on one matter, possibly some others, involving this Commission while employed on the staff of Senator Howard Baker. To the extent his previous work involved particular matters that are pending before the Commission or which may arise in the future, this office may advise him to recuse himself from those matters.

Sincerely,

Herzel H. E. Plaine

Herzel H. E. Plaine
General Counsel

Enclosure:
Form 278

cc: Frederick M. Bernthal

QUESTIONS FROM SENATOR HART

QUESTION 1: Please define the role of the Nuclear Regulatory Commission as you view it.

ANSWER: Under the provisions of the Atomic Energy Act and the Energy Reorganization Act, the NRC is charged with responsibility for regulation of the commercial nuclear power industry, and in general, for licensing facilities related to that enterprise. The NRC also has responsibility to regulate the transportation, use and storage of radioactive materials, and for the review of safety and safeguards related to civilian nuclear materials and facilities. Under the provisions of the Atomic Energy Act, as amended, the NRC is also responsible for licensing the export of nuclear materials, facilities and certain related equipment and technology. In all its activities, the NRC's charge is to provide for the public health and safety, the environment, and the common defense and security, as an independent regulatory agency.

QUESTION 2: What should be the Commission's role vis a vis the nuclear industry? Under what circumstances should the Commissioners or the NRC staff communicate with the nuclear industry?

ANSWER: The Commission's principal responsibility in relation to industry is the protection of public health and safety. In respect to matters under adjudication, ex parte rules apply to communications between the nuclear industry and the Commission. In other matters, communication between the Commission and industry should ideally provide a useful flow of information that also should contribute to protection of public health and safety.

QUESTION 3: Should the Commissioners or staff communicate with the nuclear industry and not public interest groups on a particular matter (e.g. releasing the draft Price-Anderson report to the industry and not public interest groups)?

ANSWER: Free and open access to unclassified or non-proprietary information is always a responsibility and indeed is a requirement placed on the Commission and staff by law. I am not appraised of the facts in relation to the incident described, but the general principle under which the Commission must conduct its business is clear.

QUESTION 4: Should the Commission have released the draft of the Price-Anderson report to the industry for comments and not public interest groups?

ANSWER: Consistent with the general principle laid down in the response to Question 3, if an incident such as that described did occur in fact, I would take exception. Comments should be solicited in an orderly and systematic manner from individuals and groups that represent a spectrum of views.

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QUESTION 5: What should be the role of the public in licensing decisions and rulemaking? Does public participation contribute to better licensing decisions? In what ways?

ANSWER: The public should always have the opportunity for participation and the airing of legitimate issues in licensing and rulemaking, and indeed, it is the responsibility of the Commission always to maintain an "open door" to such issues. The Commission itself, in its regulatory role and responsibility for public health and safety, is the keeper of the public trust. As such, it also has a reponsibility to determine, in the interest of effective regulation, which issues involve significant hazards. I am a firm believer in peer review, and public participation is a type of peer review in the nuclear licensing process. Second or even multiple opinions in any process can often lead to better decisions.

QUESTION 6: Should the NRC ever issue a license prior to full public participation through the hearing process? Under what circumstances?

ANSWER: The Commission currently has the authority, through Dec. 31, 1983, to issue temporary operating licenses, as provided in PL-415. That authority was granted under extraordinary circumstances in the wake of the Three Mile Island accident. The Commission is also directed to minimize the need for issuance of such temporary operating licenses. In the absence of special circumstances, such as that which gave rise to the current authority, the Commission is clearly directed by Congress to follow the normal hearing procedure as provided for by law and by the regulations of the NRC. I would want to study the record further, especially in the light of any new licensing legislation the Congress might enact, before finally determining that the regulatory process would be made more efficient and the public interest would be best served by an extension of the temporary operating license provision.

QUESTION 7: Is an adequate emergency response plan an important prerequisite for operation of a nuclear power plant? Please explain.

ANSWER: The Congress and the NRC have both recognized the necessity of an adequate emergency response plan. That finding is a logical response to the current best assessment of risk associated with operating nuclear power plants.

QUESTION 8: Does it make sense to require an emergency plan as a condition of plant operation, but not require that it be implemented? Please explain.

ANSWER: Clearly, the objective of the Commission must be to enforce current NRC regulations. However, the Commission has considerable authority under existing statute to determine how to best meet that objective, and there is also under consideration by the Congress legislation that would more clearly define the emergency planning and implementation procedures.

QUESTION 9: Can an emergency plan effectively protect the public if the state and local governments have not endorsed or have not taken the necessary steps to implement it? Please explain.

ANSWER: Implementation is currently the responsibility of the licensee and the appropriate state and local governments. The federal government will, however, stand ready to exercise its present authority in providing considerable resources to the entities responsible for implementation, in the event of an actual emergency. It is therefore not out of the question that public health and safety could be adequately protected without the direct participation of state or local government, but such protection clearly becomes more difficult.

QUESTION 10: Will you recuse yourself from decisions related to the Clinch River Breeder Reactor? What criteria will you use to decide whether to recuse yourself from such decisions?

ANSWER: Case law sets clear guidelines under which a Commissioner might consider disqualifying himself in an adjudicatory proceeding. Since I am not an attorney, I would apply those guidelines in close consultation with legal counsel before reaching such a decision. My vote as a Commissioner, on Clinch River or any other issue, must be based solely on the adjudicatory record, and the importance of avoiding even the appearance of prejudgment of issues involved in a proceeding. In the final analysis it is the responsibility of the individual Commissioner to make the ultimate decision on whether or not to participate as a decisionmaker in an adjudicatory hearing. In view of the concerns raised in my hearing I will consider carefully the question of recusal in respect to any CRBR adjudicatory proceedings, should such proceedings again come before the Commission. I can, however, assure everyone that my vote in every adjudicatory proceeding will be governed solely by the facts in the adjudicatory record, and by my best judgment based upon that record.

QUESTION 11: What steps would you take to restore public confidence in the NRC's ability and desire to protect public health and safety? What steps would you take to restore public confidence in civilian nuclear power? Please explain.

ANSWER: I believe that such confidence will only be established by a long, reliable, and consistent record of safety, brought about by an effective program of regulation. The establishment of safety goals consistent with other risks borne by the public, and the clear demonstration that those goals have been achieved; improved quality control in the construction and management of nuclear power plants; accreditation of powerplant management and operating personnel--all of these are factors that can contribute materially to a restoration of public confidence. The orderly and successful implementation of the provisions of the Nuclear Waste Policy Act, with full public participation can remove one of the greatest sources of concern to the public. Finally, TMI still stands as a reminder of failure; it must be expeditiously decontaminated.

QUESTION 12: Do you have specific proposals for improving the quality control/quality assurance programs at plants under construction? Please explain.

ANSWER: I do not yet feel sufficiently informed to make specific recommendations in that respect. The function of the NRC is that of auditor, not of construction supervisor. The basic responsibility for quality assurance lies with the licensee, and it is the responsibility of the NRC to sensitize the licensee to the vital importance of an effective QC/QA program.

QUESTION 13: Should the Congress extend the NRC's temporary authority to issue interim operating licenses prior to completion of public hearings? Please explain why or why not.

ANSWER: The Commission, attendant to its interim authority to issue temporary operating licenses, also has the statutory responsibility to minimize the need for issuance of such temporary licenses. Generally, I favor leaving the Commission maximum flexibility to deal with such matters. I would want to study the record further, however, especially in the light of any new licensing legislation the Congress might enact, before finally concluding that the regulatory process would be made more efficient and the public interest would therefore be better served by an extension of the temporary operating license provision.

QUESTION 14: Does the limitation on aggregate public liability of the nuclear industry for the consequences of an accident constitute a hidden subsidy for nuclear power? Please explain.

ANSWER: I suppose should a profit-making third party be the alternative insurer for nuclear powerplants, one could argue that there exists an effective subsidy. But to date, no such arrangement exists, nor have substantial claims ever been made or granted that would cross the threshold of actual subsidy, as you have hypothetically defined under the current arrangement. Whether a subsidy or not, a case could be made, however, that incentives for improvements in all aspects of powerplant construction and operation rise in direct proportion to aggregate public liability.

QUESTION 15: Should the Price-Anderson Act be revised to eliminate the limitation on aggregate public liability? Please explain.

ANSWER: The basic framework of the Price-Anderson Act is sound, in my opinion, since it provides a reliable, well-defined mechanism for public compensation in the event of a nuclear accident. Removal of all limitation on public liability is not, in my view, a realistic option. Rather, adjustments to the Price-Anderson limitation to reflect inflation and a reasonable estimate of actual liability incurred in the event of a nuclear accident seems to me to be a more realistic goal.

QUESTION 16: What do you see as the future of nuclear power in this country?

ANSWER: I believe that nuclear power is an essential ingredient in our country's energy future. It is an energy option that is potentially inexhaustible, and which we cannot afford to discard. The decade of the 80's has thus far been a period marked by hiatus in new power plant orders of any kind. I believe we must therefore use this time wisely to prepare for the challenges that will likely confront us in the 1990's.

QUESTION 17: What, if any role should this country, in general, and the NRC in particular, play to stop the further spread of nuclear weapons and weapons-usable materials and technology?

ANSWER: I believe that the most effective control of nuclear weapons proliferation is achieved by highly supportive participation in the international organizations charged with responsibility for safeguards. I strongly support the objectives of the Nuclear Non-Proliferation Act. As to the role that the NRC should play in such matters, I would want to familiarize myself further with the NRC's relation to other executive branch agencies and departments in the decision-making process on nuclear exports, for example, before I would care to comment specifically on what role the NRC should play. In any case, the NRC must currently continue to discharge its responsibilities for licensing nuclear exports as defined under the NNPA as an export condition, the Act's criteria require consideration be based on whether or not the country is either a NPT signatory country or meets the IAEA full-scope safeguards. To the extent foreign policy considerations predominate in such decisions, it might be more appropriate to limit the role of the NRC to making technical determinations, should Congress choose to address any such changes in legislation.

QUESTION 18: Please list all conversations you have had about your nomination with Government and nuclear industry officials. For each conversation, please provide its substance in detail.

ANSWER: The President sent my nomination to the Senate on Tuesday, July 26. Since that time, I have had conversations with eleven Members of the Senate and the House of Representatives, and brief conversations with four current sitting Members of the Commission. All of these conversations were in the nature of courtesy calls, in preparation for my nomination hearings. All of the calls are a matter of record in the Office of Congressional Affairs at the NRC. The subject matter, when it was substantive, was always in the nature of my views on issues before the Commission, or on legislation before the Congress.

Prior to submittal of my nomination, I had only the following conversations, that I recall, dealing with my nomination, and on the indicated subjects:

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|---|---|
| Joe Ryan (White House) | My views on nuclear power and the Commission itself. |
| Dr. George Keyworth (W.H.) | My views on a number of policy issues, many unrelated to the NRC; some conversation about the Commission itself. |

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|---|---|
| Mr. Ed Wilson (W.H.) | Matters of financial and security clearance; occasional later progress reports. |
| NRC Commissioners | Informing Commissioners of my candidacy; offers of assistance on issues briefing shortly before nomination announced. |

In no case did I have conversations about my nomination with nuclear industry officials. In no case, in fact, did I admit to such individuals more than that I was "a candidate" for nomination or that my candidacy was, as far as I knew, "on track," and it would have been inappropriate for me to do so. All individuals respected my silence on that point.

QUESTION 19: Have you been asked by Government or industry officials how you would vote on particular issues? Have you made any commitments on how you would vote? Please explain.

ANSWER: In only one case, in my public hearing, was I asked how I would vote on a specific issue, the question of nuclear exports to India, raised by Senator Humphrey. My response is on the record. In no other case before or since my nomination have I been asked how I would vote on a particular issue, and in no case have I made a commitment on how I would vote.

QUESTION 20: Has pressure been applied on you to vote with such Administration nominees as Chairman Palladino and Commissioner Roberts? If so, how did you respond? Please explain.

ANSWER: No. I have never felt pressured to vote in any general pattern, with any particular Commissioner or Commissioners. I heard occasionally hopes expressed that the Commission could get "a clear majority", or words to that effect, but I have never repsonded to such comments by indicating how I might vote in general or in particular.

QUESTIONS FROM SENATOR MOYNIHAN

QUESTION 1: What should be the responsibility, if any, of the federal government in the establishment and development of standards for off-site emergency preparedness plans for nuclear power plants? What federal agency is or should be responsible for this activity?

ANSWER: Since the nuclear power industry has developed as a federally regulated industry, under the provisions of the Atomic Energy Act of 1954, as amended, in my view it is entirely appropriate for the federal government to be responsible for development of standards for off-site emergency preparedness. Moreover, uniformity of such standards would seem achievable only through the offices of the federal government. Under statute, the NRC and FEMA have a shared responsibility for off-site emergency planning, under which FEMA develops the actual standards for emergency plans, while the NRC retains its responsibility for developing standards for protection against radiological hazards from nuclear plant accidents.

QUESTION 2: What should be the responsibility of state government, if any, in the development and establishment of standards for off-site emergency preparedness plans for nuclear power plants? Should state governments be allowed to enact more rigid standards or requirements than those imposed by the federal government?

ANSWER: In the interest of uniformity of standards, and particularly, of quality control in the standards developed, I believe it is appropriate for the federal government to retain responsibility for development of such standards. The federal government develops those standards in close cooperation with the states, in an extended period of public comment. In view of the rigors of this procedure, the burden of proof would clearly fall on the individual state to demonstrate that it had adequate capability for developing such plans.

QUESTION 3: What should be the responsibility, if any, of local governments, in the development and establishment of standards for off-site emergency preparedness plans for nuclear power plants? Should local governments be allowed to impose more stringent standards or requirements than those required by either the federal or state governments? What is a local government for purposes of this question?

ANSWER: The response is similar to that for question 2. Local governments also have the opportunity to participate in the establishment of federal standards for emergency preparedness. Again, I would not necessarily object in principle to local governments imposing more stringent standards, provided they could demonstrate adequate capability and rationale for development of such plans. As I understand it, local government entities are usually counties in this context.

QUESTION 4: What should be the responsibility of the federal government, if any, in the preparation of off-site emergency preparedness plans for nuclear power plants?

ANSWER: The federal government, and in this case the responsible agency FEMA, should provide active assistance to state and local government and the licensee in the developing preparedness for an off-site emergency.

QUESTION 5: What should be the responsibility of state government, if any, in the preparation of off-site emergency preparedness plans for nuclear power plants?

QUESTION 6: What should be the responsibility of local governments, if any, in the preparation of off-site emergency preparedness plans for nuclear power plants?

ANSWERS TO 5 & 6: Development of preparedness for an off-site emergency is most likely to be successful if it is a shared state and local responsibility, but the specific response in terms of documents, equipment, personnel, etc. may be substantially different for the state and the local agency at different sites. I could imagine situations where the entire responsibility might fall on the state government, and it is even possible that a local government might possess the resources and capability to proceed independently. But these are not likely scenarios for success, in my opinion; the desired solution is cooperation between state and local government, in consultation with FEMA.

QUESTION 7: What should be the responsibility of the federal government, if any, for the implementation of off-site emergency preparedness plans for nuclear power plants?

ANSWER: Again, in the case of implementation, as in preparedness activities, the primary responsibility of the federal government should be to advise and assist. I have not yet studied carefully the various legislative proposals which have been made that might shift a greater burden in preparedness to the federal government, but it clearly is appropriate, in my judgment, for the federal government to form a backstop, if needed, for the state and local governments.

QUESTION 8: What should be the responsibility of the state government, if any, for the implementation of off-site emergency preparedness plans for nuclear power plants?

QUESTION 9: What should be the responsibility of local governments, if any, for the implementation of off-site emergency preparedness plans for nuclear power plants?

ANSWERS TO 8 & 9: Again, the contribution that state and local governments and the licensees make toward implementation of off-site emergency planning will, I expect, vary substantially depending on the specific case. The federal government, with relevant statutes and regulations, should take cognizance of this need for flexibility, and for the need for cooperation between state and local governments and the licencees, in consultation with reponsible federal agencies.

QUESTION 10: What should be the responsibility of the federal government, if any, in determining the adequacy and implementability of an off-site emergency preparedness plan for a nuclear power plant?

ANSWER: I believe the current arrangement, with FEMA making a determination as to implementability, and with NRC making use of FEMA's recommendation in arriving ultimately at a decision on licensing based on the adequacy of protection of public health and safety, is a workable arrangement, and appropriately defines the federal role.

QUESTION 11: What should be the responsibility, if any, of state government in determining the adequacy and implementability of an off-site emergency preparedness plan for a nuclear power plant?

QUESTION 12: What should be the responsibility, if any, of local governments in determining the adequacy and implementability of an off-site emergency preparedness plan for a nuclear power plant?

ANSWERS TO 11 & 12: In the hierarchy of decision-making, it is appropriate for both the state and local entities to supply FEMA, and ultimately should they choose, the NRC in the hearing process, their independent assessment of the implementability of the off-site preparedness plan.

QUESTION 13: What should be the responsibility of the federal government, if any, for financing the costs of development and implementation of an off-site emergency preparedness plan for a nuclear power plant?

ANSWER: I would want to study this question more carefully in the context of the legislative proposals that have been advanced by Senator Moynihan, Senator Simpson, and others, before reaching a conclusion on the mechanism and level of federal assistance that might be appropriate. I am not opposed, in principle, to federal assistance in such matters, but clearly a large part of the financial responsibility falls on the licensee.

QUESTION 14: What should be the responsibility of the state government, if any, for financing the costs of development and implementation of an off-site emergency preparedness plan for a nuclear power plant?

QUESTION 15: What should be the responsibility of the local governments, if any, for financing the costs of development and implementation of an off-site emergency preparedness plan for a nuclear power plant?

ANSWERS TO 14 & 15: In keeping with the view expressed in 13, above, I am not yet prepared to define precisely how I might recommend to Congress the financing of emergency preparedness be divided among federal, state, and local agencies, but I would again note my inclination that primary financial responsibility for such activities rests to a large degree with the licensee. How such funds should be collected and thence distributed to the agencies responsible for development and implementation of emergency preparedness, I am not yet prepared to suggest. I would also note that these are policy matters that are not normally the responsibility of the NRC.

QUESTION 16: On May 26, 1983, I introduced a bill (S. 1395) to establish a comprehensive program of federal assistance for preparing and implementing plans to respond to radiological emergencies at civilian nuclear powerplants. Would you give me your views on this legislation?

ANSWER: I agree with the general provision in S. 1395 that would seek to identify and assure availability of appropriate Federal personnel and equipment to backstop any state, local, or licensee inadequacies that might develop in an emergency. The final responsibility for these matters, of course, rests with the Congress.

If some Federal assistance to the states is found by the Congress to be justified and essential for implementation of offsite emergency plans, one issue addressed in your bill is the NRC as an appropriate granting agency. I would want to study that suggestion more carefully.

QUESTION 17: A Peer Advisory Panel was established by the NRC late in fiscal year 1981 to consider alternative requirements for the education, training, and experience of licensed reactor operators. In May 1982, this panel reported to the Commission. Do you concur with the panel's recommendations regarding the education and experience requirements for reactor operators, senior reactor operators, and shift supervisors?

ANSWER: No. In general, I do not find that the recommendations are adequately cognizant of the need to build public and operator confidence by "professionalization" of the operator corps.

QUESTION 18: Should the NRC become more actively involved in the accreditation of utility training programs and their training staffs?

ANSWER: The utilities have, through their Institute for Nuclear Power Operations, initiated significant improvements in reactor personnel training standards. It has been some time since I looked at the question of personnel qualifications and training, but I continue to be a firm supporter of measures that will further the professionalization of the corps of personnel who operate nuclear reactors. Whether that requires prodding from the NRC, new regulatory activities, or even legislation, I am not yet prepared to say.

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